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Vol - III

Bengal Legislative
Council Proceedings
of the Lieutenant Governor
of the Bengal.
for the year 1868 - 69
Vol - III

663

Sub:- Land & Legislation/
Council Proceedings/Regulation

Place:- Bengal

Year. 1868 - 69

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OF THE COUNCIL

OF THE

GOVERNOR OF BENGAL

FOR THE PURPOSE

LAWS AND REGULATIONS.

VOL. III.—1868 and 1869.

Published by Authority of the Council.

CALCUTTA:
GOVT. SECRETARIAT PRESS.
1870.

Errata.

At the end of page 317 insert—

"By order of the President the Council was further adjourned to Saturday, the 9th January 1869."

In page 491, after the adjournment to the 19th June 1869, insert—

"By order of the President the Council was further adjourned to Saturday, the 26th June 1869."

In page 500, lines 4 and 5 from the foot, for the words "the Select Committee be discharged and the Bill withdrawn," substitute "the Bill be withdrawn."

PROCEEDINGS

OF THE

[illegible] OF THE LIEUT.-GOVERNOR OF BEN[illegible]

[illegible]

[illegible]OUSE OF MAKING [illegible]WS AND REGULATIONS

[illegible]

PRESENT:

[illegible] Lieutenant-Governor of Bengal, [illegible]

[illegible] RAMRATTE [illegible]

[illegible] Smith.

[illegible] Esq.

[illegible] Peary Chand Mittra.

NEW MEMBERS.

[illegible] Mr. Schalch, [illegible] took the oath of allegi[illegible] they would [illegible] fulfil the duties of their office.

[illegible] Peary Chand Mittra made a [illegible] of allegiance, and [illegible] would faithfully fulfil the duties [illegible]

[illegible] OF STEAM VESSELS.

[illegible] MACPHERSON moved for leave to [illegible] a Bill to make further provi[illegible] the survey of Steam Vessels [illegible] within the Provinces subject to [illegible] Lieutenant-Governor of Bengal. [illegible] it would be necessary for [illegible] India the [illegible] at any length, [illegible] the Bill which he proposed [illegible] new principle, but merely [illegible] to a principle [illegible] Council [illegible] if he should state the [illegible] under which the necessity for legislation had arisen. The [illegible] law, Act V of 1862, declared [illegible] First Section that every steamer [illegible] plying on the river Hooghly, or [illegible] of the rivers or estuaries of [illegible] should be liable to be surveyed [illegible] in every year. But in the Act [illegible] and down [illegible] ing to and from [illegible] The reason of that was that, at [illegible] that Act was passed, all, or very [illegible] all, the steam vessels in Bengal [illegible] from the Port of Calcutta [illegible] however, [illegible] steam communications [illegible] which, starting from [illegible] the Eastern Bengal Railway at [illegible] tea, plied one to Dacca and the [illegible] to Assam. Arrangements were [illegible] ingly made to send up surveyors [illegible] Calcutta to examine the steamers [illegible] those two lines and to grant them their old certificates, and that [illegible] ment seemed to have been [illegible] out satisfactorily for some years, [illegible] a circumstance recently occurred [illegible] showed the necessity for an [illegible] tion in the law. At the close of [illegible] it was found, on surveying one [illegible] steamers at Kooshtea, that there [illegible] defect in one of the boilers, and [illegible] notice was given to the owners [illegible]

Saturday, March 7th, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Harendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

NEW MEMBERS.

Mr. Trevor, Mr. Thompson, and Mr. Sutherland took the oath of allegiance, and the oath that they would faithfully fulfil the duties of their office.

Koomar Satyanund Ghosal made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

SURVEY OF STEAM VESSELS.

Mr. Dampier moved that Mr. Hogg be added to the Select Committee on the Bill "to make further provision for the survey of steam vessels plying within the Provinces subject to the Lieutenant-Governor of Bengal."

The motion was agreed to.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER moved for leave to bring in a Bill to amend and consolidate the law for the regulation of Police in Towns under the control of the Lieutenant-Governor of Bengal, and for the conservancy and improvement thereof. He said, the necessity of bringing forward the Bill had been pressed on the Government by the greater appreciation which was now shown by Natives, as well as Europeans, for measures of conservancy, sanitation, and public local improvement; and he proposed at the same time to take the opportunity of removing one or two working defects in the existing provisions of the law concerning the Police of towns. There had been a c
able advance, also, in ideas, on *Bill.* 28
of the Government at least, as t
was requisite in the Police in to nsider-
the Mofussil, but that had bee e part
met by the Act passed last ye what
Council. In his opinion, tha s of
rather gone beyond what ally
lutely requisite. He did no he
to depart from the principles had
down, but simply to ch oso-
minor points of detail found ose
able. As it was proposed in laid
to consolidate the whole la ome
Municipal matters, whethe rk-
or Conservancy in towns, t Bill
would perhaps think it sa ing
take a retrospect of the lice
legislation on the subject. ncil

The first admission of t y to
that those who congregated se of
for the purpose of profit, or
purposes, and thereby made principle
special arrangements for the together
and protection beyond what for social
dered sufficient for more spar necessary
lated tracts, should be called ir welfare
contribute towards the main was consi-
their Police, appeared to sely popu-
made by the Legislature ir upon to
1813. In Regulation XII enance of
year, it was declared that— have been
the year
I of that

"It is expedient to provide for the appoint-
ment and maintenance of an adequate establish-
ment of Chowkeedars in aid of the regular
Police, and * * * it is just and expedient that
the communities for whose bene t and protec-
tion such establishments may b entertained,
should defray the charge of ir mainte-
nance."

The Regulation then wer
down how that was to be
law was first applied only lay
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the present

Bill, it was intended to have no such restriction at all.

The outline of the law of 1813, which had been generally adhered to up to the present moment, was that the Magistrate should call on the respectable inhabitants to nominate one or more of their number to perform certain duties; to appoint, look after, and pay the Chowkeydars; to assess the inhabitants in such sum as was sufficient to pay the Chowkeydars; and to collect the assessment. All those duties were thrown on what was subsequently called the Punchayet. He would read to the Council the inducement that was held out to persons of respectability to accept office as members of the Punchayet. In the Regulation of 1813, it was prescribed that—

"As an inducement to persons of respectability to accept the trust vested in them by this Regulation, * * * * * it is hereby declared that no person or persons holding a sunnud shall be summoned by the Magistrate respecting any complaint preferred under this Regulation, unless reasonable grounds shall have been shown for believing that such person or persons have abused the powers vested in them."

That was the inducement given in return for the time and trouble they gave to the public—that they were not to be taken before a Magistrate without reasonable cause.

The limits placed on the discretion of the executive as to the strength of the Police Force to be maintained in any town, was that there were not to be more than two Chowkeydars to every fifty houses, and that limit prevailed till last year. The *minimum* salary of three rupees was fixed for the pay of a Chowkeydar; the *maximum* of the aggregate assessment in any town was fixed, in 1813, at the average of two annas on each house, the *maximum* still in force; the *maximum* assessment on each householder was not to exceed four annas. The surplus was not to go to conservancy, but towards the purchase of paper and other necessaries.

Three years afterwards, by Regulation XXII of 1816, the former law was amended. The law was extended to stations in which Joint Magistrates resided; and the following material changes were made. Three rupees was made the *maximum*, instead of the *minimum*, pay of a Chowkeydar, and the *minimum* was fixed at two rupees. The Punchayet's duties were then confined to the assessment of the rate and the appointment of Chowkeydars. They were relieved of the duty of collection, which was entrusted to an officer called the Sudder Bukshee, who had to collect through the Chowkeydaree Establishment. A more precise procedure having been found necessary, was provided. There was given to the Magistrate a power of compelling a nominee to serve on the Punchayet, and a power was also given to him of exercising the powers of the Punchayet, if they failed to perform their functions. There was also one very good provision which had fallen into disuse: the Chowkeydars were to be paid on the last day of the month in the presence of the Magistrate.

But three rupees were speedily found to be insufficient for the pay of a Chowkeydar, and in the very next year, power was given to the Government to fix the salary at four rupees.

In 1821, appeals to the Magistrate against the assessment were allowed to be preferred on plain paper: prior to that appeals had to be made on stamps. And in 1832 the cost of the collecting establishment was made chargeable to the proceeds of the tax.

In 1837 the maximum rate of assessment on any individual, which had been four annas, was raised to two rupees; and then, for the first time, it was provided that the surplus which remained, after meeting the expenses of collecting the assessment and paying the Police, should be applicable to the conservancy of the town.

In 1842 and in 1850 two Acts were passed, which showed that ideas had expanded as to the necessity of local improvement and conservancy; but those two Acts were based on the principle that, whenever the inhabitants of a town wished it, the local Government might appoint a Committee, which should have certain very large powers of imposing a rate, or, by Act XXVI of

1850, various taxes, on the inhabitants for the purpose generally of Municipal improvement. The introduction of those two Acts, as he had said before, depended on the will of the inhabitants. The system and taxation which they introduced were quite distinct from the Police assessment under Regulation XXII of 1816 and its objects: the two systems might be in force together in any one town.

Then came Act XX of 1856, with which every one who had resided in the Mofussil was familiar. That repealed, and re-enacted in an improved form, all that had gone before. The material changes introduced by that Act were—that Government was no longer limited in its discretionary power of extending the Act to stations in which Magistrates or Joint Magistrates resided, but might extend the Chowkeydaree system to any town, station, suburb, or bazar in which there was a Police Station under some officer of no lower rank than that of Jemadar; Government was also empowered to create unions, by throwing together two or more towns for the purposes of the Act; and by Section 9, the Magistrate was empowered to determine the amount which was to be levied in any year for the purposes of the Act during that year. An alternative form of taxation was also introduced. Up to that time taxation for Police purposes had been on a kind of rough estimate of the means and property to be protected of the person liable to the tax. Section 10 of Act XX of 1856, however, provided that—

"The tax to be levied in any city, town, or other place for the purposes of this Act might be either an assessment according to the circumstances and property to be protected of the persons liable to the same, or a rate on houses and grounds according to the annual value thereof."

The local Government was to determine, on the report of the Magistrate, which of those two forms of taxation was to be introduced. The limits put on the executive discretion in that Act were these: That the *maximum* assessment on any individual, which, since 1837, had been two rupees, might be as much as the pay of one Chowkeydar of the lowest grade of Police employed in the town; that the *maximum* assessment, according to the means and property to be protected of the persons to be taxed, should remain, as it was fixed in 1813, and as it remained at the present time, at the average of two annas per house; and if the tax were levied by a rate on property, the *maximum* was to be five per cent. of the annual value of such property. The general rules for assessment and Police were made more precise; the Magistrate was allowed to appoint a Sudder Punchayet to advise him in revising the proceedings of the local Punchayets; and another important change was that the appointment of Chowkeydars was taken entirely out of the hands of the Punchayet, and vested in the Magistrate, thus asserting the principle that Government was to regulate the Police of towns, even in those cases in which it was to be paid out of local funds. The establishment for collecting—work which had hitherto been done by the Sudder Bukshee through the Chowkeydars—was entirely separated from the Police Force. A distinct establishment was allowed for the purpose, precise rules were laid down, and the special powers and duties of Chowkeydars were defined. The primary object of taxation all through the Act was Police; but, under Section 36, the surplus funds, after providing for the maintenance of Police, might be devoted to the purposes of cleansing, lighting, and improvement.

He (Mr. Dampier) had stated that the first mention of conservancy, and permission to devote to purposes other than Police a portion of the funds raised by this primarily Police tax, was to be found in Act XV of 1837. Then came Act X of 1842, and Act XXVI of 1850, the two voluntary Acts to which he had referred; but it was very soon found out that that permissive legislation was practically inoperative. In many towns a few enlightened persons were to be found—and he was glad to say that their number was rapidly increas-

ing—who were fully persuaded of the advantages of local improvement, sanitation, and other Municipal matters; but it was idle to say that they could command such influence as in any way to fulfil the requirements of a law which insisted that a certain thing should be done only at the wish of the inhabitants of the particular town.

Finding this state of things, this Council, in 1864, introduced and passed the District Municipal Improvement Act, which provided an elaborate system of Municipal Commissioners, a rate according to value of property, the power of making bye-laws, and so on. It was true that Government might introduce that Act everywhere; but it was a fact that there were many towns which had for years been accustomed to the local Police taxation of Act XX of 1856, and which had, in fact, felt the first spark of Municipal vitality, but which, yet, were not ripe for the more advanced system provided by Act III of 1864 (B. C.) The necessity would be admitted of making some provision for the conservancy and improvement of such towns as those; but that had unfortunately become quite impracticable. In fact, not only had no improvement been made, but something had occurred which had made it absolutely illegal, at present, to apply one rupee of the funds which were raised under the Police Chowkeydaree Act for purposes of conservancy and local improvement. Last year, to meet the advanced ideas with regard to Police, of which he had spoken, an Act was passed by the Council, which took away the local and special character of bodies of Police entertained in Municipalities and towns, and paid out of the tax of which he had been speaking That Act made all such bodies of Police a part of the general Police Force of Lower Bengal. The whole object of that Act (VI of 1867, B. C.) was Police. There was no mention of conservancy in the whole Act. By it Section 9 of Act XX of 1856, which was as follows, was repealed :—

"The Magistrate shall determine the total amount required to be raised in any year in any city, town, or other such place for the purpose of maintaining the Chowkeydars appointed to be maintained therein, and for the purposes specified in Sections 33, 34, 35, and 36 of this Act, together with such sum as the Magistrate may consider necessary to provide against the contingency of losses from defaulters in the current year, and the amount of losses, if any, actually sustained from defaulters in the preceding year."

That Section was repealed by Act VI of 1867 passed by this Council, and in lieu of it, the Council, looking at Police only, re-enacted the following provision :—

"The Magistrate of every town shall, by the ways and means in and by the said Act XX of 1856 provided for raising the amount of the expense of Chowkeydars appointed under the same Act, cause to be levied and raised in such town the amount of the expense of the Police to be borne under this Act by such town, and the cost of raising such amount."

Unfortunately Act VI of 1867 had repealed the Section under which the Magistrate could decide, and cause to be raised, the amount which was to be expended for other purposes than those of Police, one of which was the conservancy and improvement of the town, to which the surplus might be devoted. He (Mr. Dampier) admitted that the old Act, XX of 1856, was not very clear and precise as to how the surplus was to arise. Apparently, reading its provisions together, the Punchayet were to make the best assessment they could for Police; and whenever they overshot the mark, the surplus was to be used for conservancy and the like. However that might be, the state of the case at present was that, however economical any town might be in its Police arrangements, by however much the cost of the Police might fall short of the *maximum* average of two annas per house which the law allowed to be raised, still that town could not legally raise anything more than was required for payment of the Police—not one rupee for conservancy.

The defect to which he had alluded might have been remedied by re-enacting a few sections; but it had been found desirable to consolidate the whole law as regards towns which were

not ripe for the introduction of the District Municipal Improvement Act, because some of the provisions of Act XX of 1856 had become out of date; and it had also been thought necessary to make certain alterations, merely in details, in the Police Act passed last year, which had been found not easy to work. The principal distinction he proposed to make between Municipalities under the District Municipal Improvement Act and towns under this Bill, would be that, except in one or two special cases to which he should refer when he should be permitted to bring forward the Bill, taxes would be raised in towns by an assessment, as had practically almost always been done hitherto in unions under Act XX of 1856. The alternative of a rate on property, which was given under Act XX of 1856, had, with very few exceptions, never been adopted. He proposed that in towns under the Bill the Police assessment should continue to be on a rough mode of assessment of the means and property to be protected of the persons liable to be taxed. In the District Municipal Improvement Act, the Council were aware, the tax was levied by a rate on property up to a *maximum* of seven and a half per cent. Under that Act the tax fell on proprietors. Here it would fall, as hitherto, on occupiers. No change was proposed in the practice which had prevailed in that respect. Another distinction would be, that Municipal Commissioners had, under the District Municipal Act, large executive powers; but the Punchayet, under the Bill, would be a consultative body to assist the Magistrate by their advice. He (Mr. Dampier) should be very glad if any mode could be devised by which greater powers could be given to the Punchayet, which might induce them to take more interest in the affairs of the town. If any hon'ble member could, when the Bill should be brought forward in Council or in Committee, suggest any means by which the Council could give the Punchayet such higher powers, by some provision which would be unobjectionably applicable to all the towns which might be expected to be brought under the operation of the Act, he (Mr. Dampier), for one, would be very glad to adopt the suggestion. As it was, he proposed in the Bill considerably to extend the duties and responsibilities of the Punchayet. At present they had absolutely nothing to do under the law, except to assess the tax. He proposed that they should be consulted by the Magistrate as to the works and measures to be undertaken out of the surplus for conservancy, lighting, and improvement of the town. He proposed that when the Budget for such purposes, as well as the Budget for Police, should be ready, it should, following the principle of the District Municipal Improvement Act, be laid before the Punchayet, and that the Punchayet should have the legal power of recording their remarks and objections, which the Magistrate would be bound to submit, with the Budget, to higher authority, by which those remarks and objections would be duly considered; and he (Mr. Dampier) further proposed to enact that the accounts of the local fund of the year should be laid before the Punchayet for their scrutiny and remarks, which had not been done hitherto. The number of towns to which this Bill would apply was found to be so great, that another change had become necessary. Under the Act passed last year, the Police Budgets were to be prepared and laid before the Government, with the remarks of the Punchayet, and the power of ultimately passing the Budget rested with Government. He (Mr. Dampier) wished to transfer that power to the Commissioner of the Division. The Government would of course be vested with a general controlling power; and if there was anything to be urged on the part of the rate-payers, they could, through their representative the Punchayet, go up to Government, where such representations would be properly considered.

The most important part of the Act would be the conservancy clauses. At present, although the surplus under Act XX of 1856 might be devoted to

conservancy and improvement, there were no rules for so doing, and the authorities had no more power in towns in that respect, than they had in rural tracts. Of course all such improvements in conservancy, lighting, and sanitation, like most other things, could not be had for nothing. He (Mr. Dampier) had brought to the notice of the Council that the *maximum* average for each house was fixed at two annas, at which it now stood, in the year 1813, and the requirements of the year 1868, he believed every hon'ble member would admit, were far different from those of 1813; and moreover, money did not go so far now as it did then. On the other hand, he believed it would also be admitted that the inhabitants of towns at least were, in relation to the value of money, in a better position now than they were in 1813. He therefore proposed that the *maximum* assessment should be raised to an average of three annas on each house or building. Hon'ble members would of course understand that it was not intended, as a matter of course, to rush into this, and cause the *maximum* to be raised in every single town. He was sorry he had not brought with him a Table which he had caused to be prepared for another purpose, showing the great differences in the rates of tax which were now raised under Act XX of 1856 in different towns. The *maximum* being two annas on each house, the assessment, on account of Chowkeydars, had in some towns been raised up to the full *maximum;* in others again the tax was so low as 25 or 26 per cent of the *maximum.* That was to say, that some of the Magistrates, looking to the circumstances of the towns with which they had to deal, had determined that the amount be levied at one-quarter of what the law empowered them to raise. He (Mr. Dampier) hoped that the Council would think it right to leave the discretion in the hands of the Executive Government. Hon'ble members were aware that an artificial line had been fixed as the boundary of the suburbs of Calcutta, within which a rate up to seven and a half per cent. on the annual value of property might be, and was, raised. Pass that artificial line, and you were restricted to a *maximum* average assessment of two annas on each house, which the law had considered equivalent to a rate on property of five per cent. only. In some places, such as those extra-suburban unions round Calcutta, surely power ought to be given to raise something more than might have been raised in 1813. If this Bill were allowed to be introduced, and were passed by the Council, he hoped that it would give to the Executive Government the means of gradually leading on and raising the status of the Punchayet, until the towns should be ripe to be classed as Municipalities under the District Municipal Improvement Act, and until, at last, they should reach even to that completeness and perfection of arrangements which the Council saw around them in the great city in which they dwelt.

The motion was agreed to.

The Council was adjourned to Saturday the 21st Instant.

Saturday, March 21st, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal Presiding.

H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Hurrendra Krishna Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER said, he had the honor to lay before the Council the Bill "to amend and consolidate the law for the regulation of Police in towns under the control of the Lieutenant-

Governor of Bengal, and for the conservancy and improvement thereof," for the introduction of which permission was given some time ago. Hon'ble Members would recollect that, when asking for leave to bring in the Bill, he had stated its main object to be to promote improved conservancy, and to make better arrangements for carrying out local improvements in towns which were not sufficiently advanced for the introduction of the system laid down in the District Municipal Improvement Act, but which did require some special arrangements beyond those which had been found sufficient for the rural tracts. He had mentioned that, in consequence of recent legislation, there was no longer any legal warrant for applying to such purposes any surplus which might remain after providing for the payment of the local Police out of the Local Funds raised in the town. This Bill legalized the application of the surplus to such purposes of conservancy and general improvement; and it also vested the Executive Government with discretion to raise taxation for all local purposes, including Police, to the extent of 50 per cent. That was the *maximum* of taxation which was to be imposed. Another main object of the Bill was to improve the status of the Punchayet, so as to induce respectable persons in towns to take a larger share in the management of local affairs. As those main objects had made legislation necessary, he had said that the opportunity would be taken to correct certain defects in details which were found not to work well in the existing law. He wished the Council particularly to bear in mind, that no attempt was made to increase the taxation on account of Police in those towns. The Bill was rather in the interests of conservancy and local improvement as against those of Police. Present legislation provided sufficiently for Police; and it did not provide sufficiently for other matters.

It would be seen that the Second Part of the Bill, headed Preliminary, defined the places to which the Act might be made applicable. Generally speaking, it followed the 4th Section of Act XX of 1856; but there was one change in the 3rd Section of the Bill, which was, that it was to be no longer indispensable to the introduction of the arrangements, that there should be a Police Station within the town under an officer of the rank of Jemadar. In asking leave, he had pointed out how, from the year 1813 to the present time, restrictions of that sort had gradually been relaxed; that was to say, this local taxation was first made applicable only to those towns in which a Magistrate ordinarily resided; soon afterwards it was permitted to be extended to towns in which a Joint Magistrate ordinarily resided; and then came Act XX of 1856, which made the law applicable to any place in which there was a Police Station in charge of an officer of a rank not below that of Jemadar: and in the present Bill he proposed to do away with even that restriction, leaving it entirely to the Government, as advised by the local authorities, to judge whether the Bill should, or should not, be extended to any particular place.

The Third Part of the Bill related to the maintenance of Police, and followed Act VI of 1867 of this Council. He had mentioned before that it had been thought advisable to bring the whole of the law regarding the Municipal administration of these towns into one enactment, and therefore Act VI of 1867, as well as Act XX of 1856, were repealed by this Bill, as regarded the towns to which it applied. He would particularly call attention to the 8th Section, in which the specific maximum which had been imposed for purposes of Police in the year 1813 was still adhered to. The Section ran thus:—

"The total amount which shall be chargeable to the Town Fund for the cost of any Police Force which may be sanctioned by the Government for employment within any town, including the contingent expenses of such force, shall not exceed the average rate of one rupee and eight annas per annum for each house in such town. Provided that the number of Police Officers appointed shall not be greater than one superior officer for every fifteen constables, and one constable for every twenty-five houses."

Mr. Dampier

That was also the maximum of the existing law.

Then came the Fourth Part—purposes to which the Town Fund might be applied, and preparation and settlement of Annual Budget estimates. That was, for the most part, new. It constituted the Town Fund, and declared that it was applicable, first, to the payment of the cost of collection, and then to Police; the surplus to conservancy and general inprovement. It then proceeded to lay down the details of its application. The principle was, that the Budget was to be prepared in two parts: first, the Police of the town, which, by the existing law, was fixed and settled by Government. This Bill did not affect to touch the question of the settlement of the strength of the Police Force. It pre-supposed that the strength of the Police had been settled by Government; and all that the Police Officers of the District had to do in preparing the Budget, was to draw up a statement showing what the Police Establishment, as fixed by the Government, would cost, with the addition of such contingencies as the local authorities only could estimate and foresee. Section 11 provided for this Police Budget, and followed the 4th and 5th Sections of Act VI of 1867. There was only one difference. According to Act VI of 1867, the District Superintendent of Police was to prepare a Budget about the first of November. That Budget had to go before the Magistrate and the Punchayet, then to Government, then back to the Magistrate for revision, and so on; and thus arrangements could not be finished till two or three months of the new year had elapsed. He (Mr. Dampier) had provided in the Bill that the Superintendent of Police should lay the Budget before the Magistrate as soon as possible after the close of the fifth month of the year; and in fixing the fifth month, his object had been to give ample time, not only for settling and discussing the Budget, and determining the amount to be raised for all purposes, but also to give time for the preparation of the Municipal Assessment. His object was to prevent the arrears in collection which now prevailed. This Police Budget would be prepared by the Police Officer of the District, and another Budget would be prepared by the Magistrate in close communication with the members of the Punchayet. That was new. Hitherto, whatever had been available as surplus for general purposes, had been applied by the Magistrate entirely on his own responsibility. There was nothing in the law as to drawing up sketch estimates, or consulting the residents of the town. He thought the Council would agree that it was very desirable in such matters that the respectable residents should be consulted, and their advice taken as far as possible. The Magistrate, having consulted them, would prepare the Budget for general purposes, and then the Police Budget and that Budget would form two parts of a general Budget for the town, which would be submitted to the Commissioner of the Division with any objections or remarks which the Punchayet might deem it proper to make, and the Commissioner, having considered the Budget with the objections or remarks of the Punchayet, would pass it with such modifications as he might think fit. The amount so passed would be the amount to be raised in the course of the year for the purposes of the Act. Under Act XX of 1856, it was the Magistrate who had the power of determining the amount to be levied by assessment in each year for all purposes; but the Section which gave the Magistrate power to raise money for purposes other than that of Police was repealed by Act VI of 1867. That Act ignored entirely any purposes except Police, and transferred the authority of the Magistrate to the Government, which was vested with the power of finally passing the Police Budget, and so practically determining the amount to be raised. The 16th Section of the Bill took a middle course, and gave to the Commissioners of Divisions the power of fixing the amount to be raised, because it was considered that the Commissioners of

Divisions were in a better position than the Government could be for knowing what was required in each town, and the amounts which they could properly be called on to raise. Everything the Commissioner did would be subject to the control of the Government; and if there was any dissatisfaction with the decision of the Commissioner, eventual recourse to the Government could be taken.

The Fifth Part of the Bill prescribed the nature of the tax to be levied, and the mode of assessing the same; and in that part a considerable change had been made, perhaps more in theory than in practice. Under the existing law, the tax might be an assessment according to the circumstances, and the property to be protected, of the person liable to the tax, or it might be a rate on houses and lands calculated on their annual value; in the latter case it was not to exceed 5 per cent. of the annual value. In practice, however, an assessment, and not a rate, was, he might say, universally adopted in Mofussil towns, and therefore the present Bill threw out the alternative mode of taxation according to the value of property. The principle on which the Bill proceeded was, that it legislated only for those towns which were in an inferior stage of advancement and in which landed property and houses might be supposed not to have reached that value, as compared to other property, which would justify the imposition of a rate, taking the value of such property as its basis. The idea was, that as soon as the value of such property had increased sufficiently to form the datum on which the tax should be raised, the town would be ripe to be classed as a Municipality, and to be transferred to the operation of the District Municipal Improvement Act. Section 18 contained one of the important changes in the law which were in contemplation, which was, that the proportion of the full assessment to be raised should not exceed the average rate of two Rupees and four annas per annum for each house; whereas it had hitherto been one Rupee and eight annas. He had already explained on a former occasion that the Government had no intention of causing, and would never cause, the taxation to be raised in every town to its *maximum*, simply because that was fixed by law as the *maximum*. The Bill embraced a wide range of towns, some of which were nearly fit to be classed as Municipalities, while others were in such a state as just not to be agricultural villages. Of the former class were the extra-suburban unions round Calcutta, which could certainly afford to pay a little more than they did some years ago.

The Sixth Part of the Bill related to the constitution and duties of the Punchayet. Several changes had been made in the existing law in this matter. Hitherto the powers of the Punchayet and their duties had been confined to making the assessment, and bringing to the notice of the Magistrate negligence on the part of Chowkeydars, and vacancies in their ranks. The 22nd Section of the Bill defined the duties which it was now proposed to entrust to the Punchayet. He need not repeat them. He would only say that his object in drawing up the Bill had been, to give the Punchayet as much position and as much influence in the management of the affairs of their town, other than the Police, as could fairly be given to them, bearing in mind the very different circumstances of the towns to which the Bill would extend. If in Committee any Hon'ble Member could suggest any further safe extension of that influence, he should be very glad to adopt the suggestion. He should wish the Council to bear in mind that the present was not the main Bill for Municipal Government in Lower Bengal; for the first class of towns we had another Bill more advanced. This Bill did not profess to allow Government to divest itself of its responsibilities and duties with regard to the towns to which it would apply: it professed to give the Government power to lead on the inhabitants of those towns until they should be fit

to undertake the duties of local management. He would call attention to the last Clause of the 21st Section. By the present law, and generally by Section 21 of this Bill, the Magistrate appointed the members of the Punchayet; but, with the view of keeping pace with the times, it was provided that it should be lawful for the Government, if it should see fit, to prescribe rules for the appointment of members of the Punchayet by the election of the tax-payers or of members of the Punchayet, or in any other manner than by the nomination of the Magistrate; that was to say, it was hoped that, when the Government saw a town sufficiently advanced to elect one or two or more members of its own Punchayet, it should pass rules taking away from the Magistrate the power of nomination, and conferring the power of election on the tax-payers. The 24th Section referred to the Sudder Punchayet, which was to be the general Punchayet of the town where the town was divided into three or more wards. It would be observed that, where the Sudder Punchayet existed, the duties of the minor Punchayets were to be confined to the preparation of the assessment; and that provision had been introduced, because it was considered that, for the consideration of works of conservancy and improvement, it would be quite sufficient if the Sudder Punchayet of the whole town were consulted, as they could more efficiently fix on what was required if they took a general view of the requirements of the whole town, than the Punchayets of wards could do. Section 28 contained another change with the object, again, of raising the position of the Punchayet. By the existing law, the Magistrate of the District was authorized to remove a member of the Punchayet on the representation of the tax-payers. That power it was now proposed to place in the hands of the Government alone.

Part VII, relating to the assessment of the tax generally, followed the existing law. In Section 40 a provision was introduced from the Calcutta Police Act, to which no provision of the existing law for Mofussil Towns agreed; that was to say, if, in the course of the year, it should appear that the amount of the Budget estimate that had been passed would not suffice to meet the requirements of the year, a supplementary Budget should be prepared and laid before the Punchayet, and a supplementary assessment made to meet the deficiency.

The Eighth Part of the Bill, regulating the duties of the Tax-Collectors, followed the old law; but in Section 46 there was a change to which he wished to call attention. Some question had been raised, and it was rather uncertain on the whole, as to what day the tax was to be deemed to be due. In the present Bill it was laid down that every tax should be payable by twelve equal instalments, and that the tax should be held to be due on the first day of each month. It might be hard to call on the rate-payers to pay the first instalment of the tax on the 1st of January; but it should be remembered that the tax was for the payment of the conservancy and Police Establishments for January; and unless you began to collect in the beginning of January, funds for the payment of Establishments could never be collected in the course of that month. Practically, any man who made a difficulty in paying, would not be made to pay during that month, because the processes for enforcing payment could not be easily gone through in the course of a month. In Section 53 an important change was made. The provision of the present law was that no distress should be made after the expiration of six months from the date on which the tax was due. He (Mr. Dampier) had seen discussions as to the question on what date the tax was due; and it had been shown to demonstration that six months were not sufficient to realize the tax from a defaulter who was in good earnest determined not to pay. Under the existing law, not only the property of the defaulter, but any

goods and chattels found on the premises might be distrained on account of arrears of tax for a period not exceeding six months, the owner of the property, if not the defaulter, being empowered to recover damages from the defaulters. The present law provided that no distraint should issue for recovery of an arrear which had been due for more than six months; but the Bill now before the Council removed this limitation as regarded the property of the defaulter, continuing it in favor of the property of any other person which might be found on the premises. That was taken from an old Calcutta Act, the number of which he did not then recollect. So that property other than that of the defaulter, which might be found on the premises on account of which arrears were due, could not be seized after six months; but the actual property of a defaulter might be seized at any time. If the Committee wished it, he should be glad to fix twelve months, but no shorter time, as the period after which no distress could be had, even against the property of the defaulter.

The Tenth Part of the Bill was short, but important. At present the Magistrate had no further powers for purposes of conservancy under Act XX of 1856, than he had in any agricultural village. This Part gave power Government to extend the Conservancy Clauses of any Municipal Act, especially of the District Municipal Improvement Act, to towns under this Bill.

Part XI concerned Procedure mostly. It provided for the service of notices; that the Magistrate might bring a suit instead of distraining; or on failure of distress, might make compensation out of the Town Fund; and so on. Those Clauses were taken from the District Municipal Improvement Act, substituting the Magistrate for the Municipal Commissioners.

With those remarks, he begged to move that the Bill be read in Council.

BABOO PEARY CHAND MITTRA said, the Hon'ble Mover of the Bill had been pleased to observe that existing legislation provided for the maintenance of Police, but not for other matters. If, however, the Council referred to Section 36 of Act XX of 1856, they would find it there enacted, that after paying the wages of the chowkeydars, and defraying the charges specified in the three last preceding Sections—that was the appointment of Jemadars and Inspectors of Police and of Tax Collectors and other establishment, as well as contingent expenses—the Magistrate might, with the sanction of the Commissioner of Circuit, appropriate any sum which might be available, for the purpose of cleansing the city, town, or place, or of lighting or otherwise improving the same. The Council would therefore find that there was provision already made for conservancy purposes in Act XX of 1856. The present Bill was in a great measure a second edition of that Act, with certain improvements; but one great change was that, instead of there being an average *maximum* monthly assessment of two annas on every house, there would, in future, be an assessment of three annas. Although he (Baboo Peary Chand Mittra) could understand that that additional tax was necessary for purposes of Police and Conservancy, yet it would have been well if information had been given as to whether present taxation was sufficient or not: nor were the Council informed as to what funds were now in the hands of Mofussil Magistrates, and to what purposes those funds were applied, and whether any addition to the Town Fund could be made from those funds.

One great aim of the Bill, it was said, was to improve the status of the Punchayet; and it left in the hands of the Government to make rules for the election of the Punchayet, in cases in which the Government thought it desirable to sanction the appointment of the Punchayet by election. That was so far good. But it would, he thought, be an improvement if the members of the Punchayet were required to record their opinions with

reference to the undertaking of public works. In towns under this Bill, the Punchayet were merely to assist the Magistrate with their advice; but what the opinions of the members of the Punchayet might be on specific questions might not be patent to the Commissioner of the Division or the Government; and it was necessary that the opinion of each individual member of the Punchayet should be recorded on every work undertaken by the Magistrate in consultation with the Punchayet; otherwise it would be entirely in the hands of the Magistrate to decide as to what work should be taken in hand in the first instance, and what afterwards.

The 27th Section of the Bill provided, that if a person was appointed to the office of a member of the Punchayet, or of the Sudder Punchayet, and did not undertake to perform the duties of the office without showing cause, the Magistrate would have the power of fining him fifty Rupees. That appeared to him (Baboo Peary Chand Mittra) likely to act prejudicially, because, with such a provision, few respectable persons would like to serve on the Punchayet. It was possible that a person might undertake the office, and might find that he could not get on well with the Magistrate, or there might be some other cause which he might not like to state; and therefore, if he knew that he was to be fined if he did not serve, a respectable man would not undertake the office.

There were several other Clauses which, in his opinion, would need to be carefully considered by the Select Committee; but there was one remark which he would like to make with regard to the Tax Collectors. He thought that a Collector, receiving any money other than his prescribed salary, should be punished. He was not sure whether that could now be done under the Penal Code; but he thought there ought to be a provision for that purpose, so that the Tax Collector might not make his office the means of extortion and oppression.

KOOMAR HARENDRA KRISHNA said, he did not object to the principle of the Bill, for he believed the time had come when, like the bigger towns in the country, the smaller ones should have some fund at their disposal for roads and conservancy purposes. But whatever balance should remain in the hands of the Punchayet, after payment of the Police, ought, he thought, to be devoted to purposes of conservancy and road-making only. Under the 10th Section of the Bill, however, he perceived that the balance might be devoted on account of dispensaries, vaccination, and other purposes. It might be said that it was optional with the Magistrate or the Commissioner of the Division whether such funds should be devoted to such purposes or not; but he (Koomar Harendra Krishna) believed that, according to a recent interpretation of the High Court, the words "shall be" in law were imperative, and that acts thus directed to be done must be performed. The principal object of the Bill was to have a certain balance of funds for conservancy purposes. He was sure that if the other purposes to which the money might be devoted were retained in the Bill, it would not be very long before further legislation would be required for the purpose of extending the maximum average limit of three annas per house, which was fixed in the present Bill.

The next question to which he would refer, was the formation of unions in connection with small towns. Those unions, it was provided in Sections 3 and 4, were to be constituted of places other than agricultural villages; but, practically, he did not think that it was only suburban places that were included in unions so called. He could cite instances in which villages situated from 16 to 20 miles beyond the town were constituted unions to a town, and were assessed at town rates. He was sure that whatever improvements under this Bill should be made, they would first be undertaken in the towns, and whether any improvements would be effected

afterwards in the villages lying 16 or 18 miles off from those towns, was very doubtful.

Sections 18 and 19, read together, appeared to be somewhat ambiguous. He would infer from them that, except in cantonments where the assessment was to be according to a rate on houses and grounds, the tax was to be according to the circumstances and property to be protected of the person liable, and the *maximum* assessment on any one person could not be more than the pay of a constable of the lowest grade. Now, the question naturally arose, what was the pay of a constable of the lowest grade? Since Act XX of 1856 was passed, and up to the present time, the pay of a constable of the lowest grade had ranged from Rs. 3 to Rs. 6 per month, and he had heard from certain quarters that even Rs. 7 was not considered sufficient to obtain the services of a really good Police Officer, and that there was a tendency to raise it to Rs. 8. If, therefore, the assessment was to be according to the circumstances and property to be protected of the person liable to the tax, he thought it would be hard to a person who was a little richer than the rest of his town'speople, to pay an annual assessment of Rs. 96, while on all the rest of the persons in the town the assessment might, perhaps, be within Rs. 3. Generally, the constables at present appointed under Act V of 1861, were no more than the old village chowkeydars, and when the people had paid from time immemorial from Rs. 3 to 4 for their chowkeydars, it would be considered a hardship by the tax-payers if those very policemen were now to get from Rs. 5 to 8, when to all intents and purposes such services could be secured at salaries of from Rs. 4 to 5. He wished, very much, therefore, that the pay of a constable of the lowest grade, whatever it might be, should be definitively fixed by the Bill, if it should appear to the Select Committee to whom the Bill would be referred that there was considerable variance in the rates of their pay.

Great stress had been laid by the Hon'ble Mover of the Bill, upon the statement that this Bill, would give the Punchayets a higher status than they had hitherto possessed. But what were they to be in reality? Nothing more than counsellors to the Magistrate. They would have actually no independant power, either as regarded proposed works of public utility, or in their character of revisers of their own assessment; to suggest anything, or undertake practically any work that might tend to the good of the people. They would have to make the assessment, but they would have no opportunity of redeeming any popularity they might have lost in so doing, by showing that they had undertaken a work that would be beneficial to the tax-payers. Only recently, in the Imperial Council, there had been an excellent speech made by the Hon'ble Mr. Shaw Stewart, who proposed to give, not a nominal, but a real power to the Punchayets in the North-Western Provinces, and he (Koomar Harendra Krishna) thought the Council would do well to see whether or not the powers proposed to be vested in Punchayets in the North Western Provinces, could not be equally vested in Punchayets in the Lower Provinces.

BABOO RAMANATH TAGORE said, he would endeavour not to detain the Council longer than was absolutely necessary in the few remarks that he was about to make. He had gone carefully over the Bill. As to the assessment, he thought the people of towns would not object to pay the additional one anna if they got good roads, wide communications, well excavated tanks, and other improvements; but he feared that the expectations of the rate-payers would not be completely realised. The provisions of the Bill, as far as conservancy was concerned, were vague and inadequate to the real objects of the Bill, which was for the improvement of conservancy. It was true the Act gave power to the Magistrate to appoint the Punchayet, but the powers of the Punchayet were very limited: they were only intended

to be advisers to the Magistrate, and nothing more. He was also aware that the Act gave power to the Punchayet to record minutes against the opinions of the Magistrate; but, considering the position and influence of the Magistrate, he (Baboo Ramanath Tagore) doubted very much whether the members of the Punchayet would have courage enough, or feel inclined, to write or say anything against the opinion of the Magistrate, particularly remembering that they would have no real power. Under those circumstances, he thought that adequate power should be given to the Punchayets; so that they might regulate the conservancy of their towns, and so that matters might go on according to the wishes of the people. If the Council did not feel inclined to trust the Punchayets with so much power, then he (Baboo Ramanath Tagore) said, do away with the Punchayet altogether, and give the Magistrate unlimited power. Then the Magistrates, who were men of the highest principle and integrity, would conduct the affairs of the towns in a satisfactory manner, knowing that the responsibility rested with them. He said that the Punchayet, if constituted as was proposed, would prove nothing better than a buffer between the Magistrate and the rate-payers.

The 58th Section of the Bill gave the Magistrate power to regulate the conservancy of the town, and for that purpose gave the Government power to extend certain of the provisions of the District Municipal Improvement Act. That law was intended for towns, the inhabitants of which were far advanced in civilization, improvement, and intelligence. But as the present Bill was intended to apply to towns inhabited by men not very intelligent and educated, it would be a great hardship to the people to extend to their town the provisions of an Act adapted to towns of a much more advanced position. He therefore trusted that the Government, in extending those provisions to towns under this Bill, would take into consideration the circumstances of the people to whom it was to be made applicable.

There were many other points of detail which he thought required consideration; but he did not wish at present to enter into them, as he knew that the gentlemen who would be appointed on the Committee would remedy any defects that might exist.

MR. HOGG asked to be informed if, under the 3rd Clause of Section 22, it was intended that the work of assessment was to be made over entirely to the Punchayets.

MR. DAMPIER, in reply to the question of the Hon'ble Member, said, it was intended that the entire work of assessment should be conducted by the Punchayet; but the Magistrate would of course revise the assessment after it was made. It was with some satisfaction that he found that the main features of the Bill were opposed in one point only. One Hon'ble Member (Baboo Ramanath Tagore) would either do away with the Punchayet altogether, and leave the Magistrate unfettered in his action; or give the Punchayet more material power. If the Council did that, he (Mr. Dampier) could only say that they would lose one of the great objects of the Bill, which was gradually to lead on those who were not fit to exercise power, and to instruct them until they were in a proper state to be entrusted with power. Let the members of the Punchayet take a part in the deliberations of the Magistrate; let them give advice; let them see the aspect in which the same subject presented itself to other minds than their own; and they would gradually learn. Thus a town which was in the last scale of civilization, and to which the Act would be applied, would be gradually brought up to the state of civilization which they found in the extra-suburban unions, which he (Mr. Dampier) looked on as highest in the scale to which this Act would be applied. The moment we said the Punchayets were not to be constituted, we took away from Go-

vernment the power of gradually training the people to govern themselves. He had already said that if any Hon'ble Member could suggest in Committee some further extension of power which could safely be given to all the Punchayets, bearing in mind the very low class of towns to which the law would extend, he would gladly vote for its adoption.

The Hon'ble Member who first spoke (Baboo Peary Chand Mittra) had pointed to Sections 36 and 37 of Act XX of 1856 as providing for the application of the surplus of the Police Tax to conservancy purposes, and had taken objection to his (Mr. Dampier's) having said that the present law did not provide for the application of money to conservancy purposes. He was sorry that he had failed to make himself understood when he asked leave to introduce the Bill; he would therefore read what he had then stated:—

"By it (Act VI of 1867) Section 9 of Act XX of 1856, which was as follows, was repealed:—'The Magistrate shall determine the total amount required to be raised in any year in any city, town, or other such place for the purpose of maintaining the chowkeydars appointed to be maintained therein, and for the purposes specified in Sections 33, 34, 35, and 36 of this Act, together with such sum as the Magistrate may consider necessary to provide against the contingency of losses from defaulters in the current year, and the amount of losses, if any, actually sustained from defaulters in the preceding year.'"

Section 9 of Act XX of 1856 conferred on the Magistrate the power of determining how much was to be raised for the purposes of the Act, including conservancy. But, by the Act of last year, that Section was repealed and re-enacted in this way; that was to say, it took away the power, and re-enacted that—

"The Magistrate of every town shall, by the ways and means in, and by the said Act XX of 1856 provided for raising the amount of the expense of chowkeydars appointed under the same Act, cause to be levied and raised in such town the amount of the expense of the Police to be borne under this Act by such town, and the cost of raising such amount."

Act VI of 1867, therefore, took away the power under which the Magistrate could order the amount to be raised for purposes of conservancy, and gave no power to raise any amount, except what was just sufficient for Police. That was one of the main reasons which led to the revision of the existing law being undertaken.

The Hon'ble Member also desired certain information as to how local funds in the Mofussil were disposed of and made available for towns. It did not occur to him (Mr. Dampier) to gather information on the question, because he did not think it would be required; but he had no doubt that the Government would direct the information to be laid before the Select Committee, if the Hon'ble Member would make a definite request to that effect.

The Hon'ble Member had next given his opinion that the views of each member of the Punchayet regarding each proposed work should be individually recorded and sent up to the Commissioner of the Division. He (Mr. Dampier) assumed that the Magistrate would take the individual opinion of each member of the Punchayet; but the remarks to be sent up to the Commissioner ought to be the remarks of the Punchayet, or of the majority of the Punchayet, and not of individual members. Of course, if any member of the Punchayet strongly objected to the conclusions of the majority, he could add his dissentient note to the remarks of the Punchayet; but he (Mr. Dampier) thought it undesirable that, as a rule, the opinion of each member of the Punchayet should be recorded and sent up to the Commissioner for consideration.

Objection was next made to the fine of fifty Rupees which the law provided for a person appointed on the Punchayet who should refuse or neglect to act. He (Mr. Dampier) could only say that he was quite willing to have that question fully discussed in Committee. It was nothing new, but was a provision of the existing law. He admitted that he himself had

some doubts as to its propriety, but he thought it should be allowed to stand in the Bill for consideration in Committee.

As to the question of the Tax Collector receiving an unauthorized reward, he could assure the Hon'ble Member that the Penal Code contained ample provisions on the subject.

With regard to Sections 19 and 20, which referred to cantonments, he proposed to recommend to the Select Committee that those Sections should be entirely omitted from the Bill. The subject of Municipal taxation in cantonments was just then undergoing a good deal of discussion between the Supreme and local Governments, and there was a separate law providing for the conservancy and local improvement of cantonments. He proposed, therefore, to introduce a Clause saving Act XX of 1856 as regarded cantonments in which that law had already been introduced, and this Bill would not refer in any way to cantonments.

With reference to the remark of the Hon'ble Member on his left (Koomar Harendra Krishna) that the words "shall be" would have the force of "must be," he (Mr. Dampier) was perfectly willing to put the Section referred to in any shape that would get rid of the judicial construction to which the Hon'ble Member had alluded; but that, also, could be done in Committee.

Then the Hon'ble Member made some extremely just remarks about the constitution of unions at present. He (Mr. Dampier) could speak from experience that, according to his view of the law, unions had been constituted, and were now found to exist, which did not fulfil the intentions of the law. He had seen in some unions villages at from eight to ten miles from the Sub-Divisional Magistrate's quarters. The village of Takee was in the Busseerhaut union, but the surplus that arose in the union was all spent for the improvement of Busseerhaut. From what he had heard lately from the Magistrate of Hooghly, it seemed that the abuse prevailed as well in other districts. It was the duty of the Executive Government to check such abuses; but if the Select Committee could suggest any thing to define more distinctly the intention of the law, the suggestion, he had no doubt, would be adopted.

With reference to the remarks of the same Hon'ble Member as to the variations in the pay of a constable of the lowest grade, he (Mr. Dampier) had no objection to the suggestion that the Council should fix the *maximum* of assessment on a single individual at a specific sum, instead of at the pay of a constable of the lowest grade.

There was one remark of the Hon'ble Member who spoke last (Baboo Ramanath Tagore) in which he (Mr. Dampier) must say that, much and justly as the Hon'ble Member's advice and opinions were appreciated on general subjects, the Hon'ble Member was behind the age. The Hon'ble Member doubted whether Punchayets would be found with sufficient courage to oppose the opinions of the Magistrate. That remark was becoming of less and less weight every day. In and about Calcutta, and in the districts adjoining, members of the Punchayet would not be wanting in courage; and the circle in which such persons were to be found was gradually extending from Calcutta as its centre. He (Mr. Dampier) might even say that a class was springing up who would take a certain opinion, for the only reason that the authorities had taken the other opinion. That was not a class that had existed hitherto; but it was springing up, and was useful as the world went.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of Mr. Thompson, Koomar Harendra Krishna, Baboo Ramanath Tagore, Koomar Satyanund Ghosal, and the Mover.

SALE OF TENURES.

MR. DAMPIER said, the next motion on the List of Business was, that the Advocate General would move that the Report of the Select Committee

on the Bill "to provide for the conduct of sales of tenures in satisfaction of public demands recoverable as arrears of land revenue" be adopted, and the Bill withdrawn. Unfortunately, the learned Advocate General was not in his place to-day in consequence of sickness. He (Mr. Dampier) had therefore been requested to bring forward the motion. The Committee found that the subject was one which threw them back on the consideration of laws which were somewhat entangled, and said in their Report,—

"Various amendments of the Bill have been suggested to, and considered by us; but they so completely change the character of the Bill, as committed, that we do not think they could, with propriety, be introduced in Committee, and we recommend that the Bill should not be further proceeded with."

He might mention that the learned Advocate General had under consideration a Bill, in another form, to meet the original object of the Bill which it was now proposed to withdraw, and which would be more easy to manage and to work.

The motion was agreed to.

RECOVERY OF ARREARS OF REVENUE.

In consequence of the absence of the Advocate-General, the motion which stood in the List of Business for leave to bring in a Bill, to make further provision for the recovery of arrears of Land Revenue, and Public Demands recoverable as arrears of Land Revenue, was not proceeded with.

The Council was adjourned to Saturday, the 28th Instant.

Saturday, March 28th, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal Presiding.

T. H. Cowie Esq., *Advocate General.*
H. L. Dampier, Esq.,
E. T. Trevor, Es.,
A. R. Thompson, Esq.,
S. S Hogg, Esq.,
Koomar Hurrendra Krishna Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

RECOVERY OF ARREARS OF REVENUE.

THE ADVOCATE GENERAL moved for leave to bring in a Bill to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue. He said, it would be in the recollection of the Council that the object or part of the objects contemplated in the Bill which he now asked leave to bring in, had already been brought before the Council in the measure introduced by Mr. Schalch, and which underwent considerable discussion and consideration in Committee. That measure, he (the Advocate-General) might say briefly, amounted to no more than this—a revival of the procedure prescribed by law for the sale of tenures in respect of demands other than land revenue, the existing law not providing for the conduct of such sales in consequence of the Act of this Council which repealed Act VIII of 1835. Accordingly, Mr. Schalch's Bill was limited to the definition of tenures saleable for the realization of demands of the nature in question, and simply provided the course to be followed in the conduct of such sales—a course not materially different from the procedure laid down in the Code of Civil Procedure, except that the Revenue Authorities were substituted for the Court. When that Bill came to be considered in Committee, it very soon appeared to the Hon'ble Member opposite (Mr. Dampier) and himself, that it was

absolutely necessary, with a view to the proper consideration of the subject, that the main provisions of Act XI of 1859, with regard to sales for arrears of revenue proper, should be considered; and the more that Act was looked into, the more the necessity of amendment and extension became apparent. The Act in its general purport undoubtedly was intended to apply to sales for revenue proper, that was, sales of estates in respect of default in the revenue to which those estates were liable; but, in an inferential and indirect way, the Revenue Authorities were invested, or rather he should say intended to be invested, with powers of sale over estates proper other than such estates, and with powers of sale in respect of demands which were not revenue, but which were recoverable as revenue. He would just refer to one or two Sections of Act XI of 1859, that the Council might see in what an indirect way that law proceeded. The Act did not contain anything in the shape of definition of the terms "revenue," "estate," "proprietor;" but starting on an assumption as to the amount of revenue due, went on to say that the Board of Revenue were to determine upon what dates all arrears of revenue, and all demands which by the Regulations and Acts in force were directed to be realized in the same manner as arrears of revenue, should be paid up in each district, in default of which payment the estates in arrear in those districts should be sold. So that the Board's general direction with regard to sales would appear to be limited to sales of estates in respect of which demands were due for revenue so payable. That general Section imposing the liability to sale, was apparently limited to those cases where estates were sold for arrears of revenue or demands arising in respect of such estates, and so far it seemed as if the Legislature did not see the necessity of selling under this procedure, in satisfaction of arrears of revenue, other estates than those with regard to which the arrear accrued. Then in the 5th Section there was introduced, but most indirectly, a kind of intimation of the probable intention of the Legislature, that other estates than those with regard to which the arrear was due, should be saleable, and there was also intimated the intention of the Legislature that sales should not be limited to arrears of revenue proper, but should extend also to demands recoverable as arrears of revenue. Again, in the 31st Section the general and substantive part of the Act came back to what the Act started with, namely, the case where an estate was put up to sale in respect of arrears accruing on the estate itself. We came then to the portion of the Act for the more limited object stated in the 3rd Section. In the 31st Section it was directed that the purchase-money was first to be applied to the liquidation of the arrears for which the estate was sold, but it did not provide for the recovery of any portion of the arrears which should not be so liquidated. Now, in addition to that difficulty—and difficulties had arisen in regard to the operation of the Act—there was the question, whether or not shares of estates (meaning shares not separately recorded under the Act), and whether or not *Lakhiraj* tenures, could be sold for arrears accruing on them. And there was also the matter, omitted altogether from the Act, and for which Mr. Schalch's Bill was intended to provide, of demands recoverable as arrears of revenue by the sale of every description of tenure other than estates.

Accordingly, what he (the Advocate-General) proposed, was this. To take up Act XI of 1859 from the point at which an estate or estates had been sold on account of arrears of revenue payable in respect of such estates. Then, in the event of the proceeds of the sale of the estate in the first instance liable, not being sufficient to satisfy the arrear, to enable the Revenue Authorities to proceed against any other estate and tenure, as defined in the Bill, belonging to the proprietor: to proceed also against his personal property, and, if necessary, by

the arrest and imprisonment of the defaulter. The whole of those were remedies which, though not now in operation, Government had had ever since 1799, but which latterly Government had been unable practically to enforce for various reasons, principally in consequence of the inexplicable repeal, by an Act of this Council, of Act VIII of 1835. He, therefore, proposed to restore those processes for the recovery of arrears of revenue, and at the same time to make them applicable in cases of public demands other than revenue in the ordinary sense; and he had specified by way of definition, following the existing Acts and Regulations, the particular classes of demands which were or ought to be recoverable as revenue.

With regard to procedure, in place of following the course adopted by Mr. Schalch and laying down a specific procedure, he (the Advocate-General) had thought it preferable to do that by way of reference to the provisions of the Code of Civil Procedure, which were very well understood by the Revenue and Judicial Authorities and were found to work exceedingly well. It might be in the recollection of Hon'ble Members that when Mr. Schalch introduced the Bill, he (the Advocate-General) had made a suggestion, having for its object the placing of the sales of tenures, of whatever description, on the same footing, as regards the absolute title and interest of the purchaser, as was the result of sales of estates under Act XI of 1859. His object in making that suggestion was, because he knew from practical experience that sales in execution of decrees, where only the right, title, and interest of the judgment-debtor were sold, always resulted in a sacrifice of the value of the estate. But, on further consideration, he was afraid there would be such practical difficulties in giving on such sales the same absolute title as was conferred when estates were sold for arrears of revenue payable thereout, that he had not thought proper to embody that suggestion in the present Bill. The only substantive provision in the Bill was one on which he thought he had touched in the discussion on Mr. Schalch's Bill. It was that, as regards all lands or tenures which were held directly from Government, the rent payable to Government should be regarded as identical with revenue, as in principle and in fact it most undoubtedly was; and any distinction between the position of Government as Government and as zemindar appeared to him (the Advocate-General) to be worse than idle to maintain. He, therefore, proposed to introduce a Section which would enable the Revenue Authorities to apply exactly the same process with regard to arrears in khas mehal estates, as this Bill and Act XI of 1859 provided in cases of what was known as arrears of revenue proper. With a view to prevent the too stringent application of the law, he had given additional Clauses which would extend the powers in appeal, and the time for presenting appeals; and he thought the application of those Clauses, after they had been finally settled, would be found to be such that, while they placed the rights and interests of the public, as regards the realization of revenue, on a surer footing, would not enable the authorities to exercise those rights unjustly or harshly, so as unduly to affect the rights of third parties. In saying that the procedure under the Bill was given by reference to the procedure of Act VIII of 1859, he should mention one exception. Under that Act, when a decree had been made and a prohibitory order issued in respect af any property alleged to be in the possession of the judgment-debtor, any one interested in such property might file a claim. He had introduced some Clauses with regard to that relief, and precisely the same relief was proposed to be afforded to any person aggrieved by any extended power on the part of the Collector, whether as regards attachment or sale, as was given in the Act in respect of claims under the Code of Civil Procedure.

With those few observations, he begged to move for leave to bring in the Bill.

MR. HOGG said, he did not propose to detain the Council by opposing the

introduction of the Bill, but he wished to reserve to himself the right, when the Bill—

THE PRESIDENT suggested that the motion before the Council was only for leave to bring in the Bill: there would be a future opportunity for the Hon'ble Member to make any remarks which he thought fit.

THE ADVOCATE-GENERAL said, it had been recently ruled in the Council of the Governor-General that no discussion could take place on a motion for leave to bring in a Bill.

THE PRESIDENT said, he should not go the length of saying that there should never be any discussion on the motion for leave to bring in a Bill, because he thought a question might be mooted which Hon'ble Members should think was improper to be brought before the Council, and on which they might properly address the Council; but he believed it would only be in extreme cases when any member would think that leave should not be given.

The motion was then agreed to.

POSSESION OF NEW CHURS AND ISLANDS.

MR. THOMPSON moved for leave to bring in a Bill to amend the provisions of Section VII of Act IX of 1847, and to empower the Government of Bengal to take immediate possession of all churs and islands thrown up in large and navigable rivers or in the sea within the jurisdiction of the said Government, and to proceed at once to assess and settle the lands of the same, irrespective of the proceedings of the Revenue Survey. He said, the object of the Bill had reference specially to the last few words of the title of the Bill; all that preceded them having already the sanction of legislative enactment. The Council would know that by Clause 3, Section 4, Regulation XI of 1825, which was a Regulation declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea—by the Section in that law which he had referred to—all churs and islands thrown up in navigable rivers, the channels between which and the main land were not fordable, were at the disposal of Government. Even at the time when that law was passed, this was no new assertion of the right of Government to such churs and lands, but, as the Section which he had quoted said, it was a right which appertained to Government, "by established usage," universally recognized. Such being the case, it was of course within the competency of Government, when any chur or island was thrown up, (such as Section 4 of Regulation XI of 1825 referred to,) to proceed at once to take possession and assess the land, subject to the rules laid down in that behalf. The enactment of Act IX of 1847, however, materially changed the procedure, and by laying down rules for investigation as to the liability to assessment of the lands gained by alluvion from the sea or from rivers, and also of churs or islands thrown up in the same, it enacted that the power of Government to take possession and to proceed to assess and settle the same, should be regulated by the provisions of Section 3 of that law. That Section provided that—

"It shall be lawful for the Government of Bengal, in all districts or parts of districts of which a Revenue Survey may have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey."

Again in Section VII of the same Act it was enacted that—

"Whenever, *on inspection of any such new map*, it shall appear to the local Revenue Authorities that an island has been thrown up in a large and navigable river liable to be taken possession of by Government under

Clause 3, Section 4, Regulation XI. 1825, of the Bengal Code, the said local Revenue Authorities shall take immediate possession of the same for Government, and shall assess and settle the land according to the rules in force in that behalf."

The Council would therefore observe that the power of Government as regards the occupation and assessment and settlement of churs and islands thrown up in navigable rivers, was to be regulated by the results of the inspection of a new map made under the provisions of Section 3; and further, that by the same Section no new survey of a district could be commenced till the expiration of ten years from the Government approval of the previous survey. He should, perhaps, make the law as it stood clearer to the Council by an illustration. A Revenue Survey of a district was concluded in the year 1860, and the Government notification of its approval was publicly gazetted in the same year. In the following year by the drying up of a part of the river, an island began to form in mid channel, entirely separated from the main land by deep unfordable water. The island gradually increased in size, and became capable of occupation for purposes of agriculture; and if we might judge from the haste with which possession was taken, and the tenacity with which that possession was retained, it must be considered a valuable acquisition to any one who succeeded in getting a footing upon it.

Now, as he had before said, the proprietary right in this island belonged to Government. No one else had such a right either in equity or by law; and yet in practice, by the operation of the Section of the law which he (Mr. Thompson) proposed to amend, that right, solely vested in Government, was barred by the necessity imposed (preparatory to taking possession) of the inspection of a new map, which could not be commenced till the expiration of ten years from the completion of the previous survey, which was in 1860. The consequences of that involuntary and compulsory inaction on the part of Government might be easily supposed. It was well illustrated by the known lines,—

"The simple rule,
The good old plan,
That he might take who had the power,
And he might keep, who can."

Sometimes the nearest riparian proprietor took quiet possession; sometimes a stranger from a distance was the first occupier; occasionally both parties appeared on the scene together, and contentions ensued, with the details of which we were all familiar, and of which it would be sufficient to say that they ultimately afforded occupation to both the Civil and Criminal Courts.

In the meantime, the hands of Government were absolutely tied as regards any assertion of a right undeniably its own by the law of the land. It was compelled by the law to wait the expiry of at least ten years from the approval of the Revenue Survey, before it could take any action at all in claiming its own; while parties who had no rights beyond what forcible possession at first gave them, were in the enjoyment of the proprietary profits, free from all public assessment.

It was to remedy that anomaly and to prevent those evils that he proposed to bring in the present Bill.

He might be allowed to explain that, as he read the 3rd Section of Act IX of 1847, he thought the ten years after the revenue survey there referred to, applied only to the first decade; not to any subsequent one. After that, it probably would be within the competency of Government, at any time, whenever it deemed expedient, to order a new survey of lands lying on the banks of rivers or on the shores of the sea, in order to ascertain the changes that had taken place, and, if necessary, to proceed to assess any land that might have appeared.

If that was the right interpretation of the Section, in many districts the survey of which had been completed more than ten years ago, no such difficulty would arise. Still there were many districts in which many years had yet to run before the ten years would have expired; and there were numerous

others in which survey proceedings had not yet commenced or were still proceeding, and in all those cases it was necessary that there should be an amendment of the law, both with a view to protect the legitimate rights of Government, and to secure the public safety and the peace of the country.

If he obtained leave to bring in the Bill, it would be in the hands of Hon'ble Members early next week. There would be a clause giving the government power to take at once possession of such churs and islands, irrespective of the proceedings of the revenue survey; and probably a Section would be required to define the rights of parties, when, by an extension of the lands of the chur by the action of the river, it came in contact with the main land.

There should also be a provision in the Bill, as in the present law, that if any party was aggrevied by the act of the Government, he should be at liberty to contest his claim by means of a regular suit in the Civil Courts.

The motion was agreed to.

SURVEY OF STEAM VESSELS.

MR. HOGG said, since the Bill "to make further provision for the survey of Steam Vessels plying within the Provinces subject to the Lieutenant-Governor of Bengal," had been considered by the Select Committee, it had been suggested to him to provide that persons desiring to act as Engineers should be compelled to pass some sort of examination and produce some certificate of fitness. He would, therefore, beg permission to move that, instead of the Report of the Select Committee being now taken into consideration (which was the motion on the List of Business), the Bill be referred back to the Select Committee for the purpose of considering the expediency of introducing Sections to meet the object in view. He would also move that the Committee be requested to submit their Report within a week.

The motion was agreed to.

The Council was adjourned to Saturday, the 4th April.

Saturday, April 4th, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal Presiding.

T. H. Cowie, Esq., *Advocate-General.*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
Koomar Harendra Krishna Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

RECOVERY OF ARREARS OF REVENUE.

THE ADVOCATE-GENERAL moved that the Bill "to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue," be read in Council. He said, he proposed simply to go through the principal Sections of the Bill, explaining, as briefly as he could, the object in introducing the measure in the present form, and not repeating what he had the honor of laying before the Council when he had obtained leave to bring in the Bill. It would be remembered that he had pointed out that Act XI of 1859, the amendment and explanation of which was the principal object of this Bill, was defective in several respects, and that it did not give a definition of some terms which stood practically in need of definition. In the definitions which he had given in the Interpretation Clause of the Bill, he had endeavoured to meet two principal objects, first by such a specification of the meaning of certain terms as should remove uncertainty as to the construction of Act XI of 1859; and, secondly, by extending the effect of the provisions of that Act, and by doing away with the distinction, which certainly had been supposed to exist, though according to his notions of the law it never really could have existed, between what was ordinarily understood as revenue payable to Government, and what was understood as rent in the case of lands held directly

from Government. With reference to the second object, the abolition of the distinction between revenue and rent, it was provided that the term "proprietor" should include any farmer or tenant by whom any land was held directly under Government, or by whom any demand was payable to Government. Then, the definition of the word "revenue" had reference to the peculiar form of Act XI of 1859, which, not containing any definition of terms, did in an indirect and inferential way deal with certain public demands, such as *tuccavee*, and money advanced for the making and repairing of embankments, reservoirs, or water-courses, and gave the same absolute power of sale, and title under that sale, in repect of such demands, as in the case of estates sold for arrears of revenue proper. That was why the term "revenue" was extended to those demands, instead of including them with other demands which formed the principal subject of the later Sections. It appeared doubtful, under the present law, as to whether or not shares of estates could be sold for arrears of revenue due on them. To make it quite clear that that power was intended to be given by the Act, the term "estate" was so defined as to place persons, who desired that they should be separately assessed, in the position of proprietors. Then the substance of the definition of the term "tenure" was, that it should include any interest in land, lakhiraj or not, which was transferable; and the definition of the word "demand" was taken from various Regulations and Acts under which, according to the existing law, certain amounts payable to Government were recoverable as Government revenue. The Council would understand that the specification of the particular instances of demands which, under this Bill and Act XI of 1859 would be so recoverable, did not introduce the slightest alteration in substance: they only applied the necessary process for the recovery of those demands. Then there were definitions of the terms "Collectorate" and "Collector," which would possibly require correction.

The 3rd Section of the Bill, which would also require correction, was one which, if he might use the term, was put forward tentatively. Its object was to give the Commissioner of the Division a certain discretionary power of interference, without there being any recourse to the process of appeal. Opinions might differ as to whether interference should be exercised otherwise than by the regular process of appeal. He (the Advocate-General) had therefore merely introduced the Section as a provision for further consideration in Committee, and when the Bill came up before the Council for final consideration.

With the view of extending, and making more precise and inflexible, the operation of the sale law, and at the same time to do away with anything having the appearance of undue harshness or stringency, it was proposed in the 4th Section to extend the time now allowed for application to the Collector and Commissioner after notice of sale should have been issued; and with the same object, the 5th Section went on to provide what he (the Advocate-General) thought was in every sense desirable, if not necessary, for service of personal notice where it could be personally served. Under the existing state of the law as regards estates and tenures saleable under Act XI of 1859, there was only an indirect notice given to the proprietor. Notice was given to the ryots on the estate or tenure that they were not to pay to the existing proprietor after a certain date. It was not proposed to omit that provision, but that, in addition, there should be a personal notice to the person interested in the sale of the tenure. That was provided for in the 5th and 6th Sections of the Bill. And then, having, so far as we could, made every provision and safeguard against improper or unnecessary or unjust sales, the 7th Section did what it was equally necessary to do, namely, to give effect to any proceeding taken after issue of those notices, inasmuch as it might be considered to have produced that result which had contributed not a little to the increased prosperity of the people and the security of title, namely, the

The Advocate-General

finality of title which a purchaser, under a sale once effected, was to acquire. Such security of title was obtained by providing that a certificate of title given to any purchaser was to be taken as conclusive evidence of the issue of all the notices required, and that the purchaser's title was not to be affected by reason of any omission, informality, or irregularity in the proceedings under which the sale was had. In substance and in principle that Section had been taken from the similar provision in the Encumbered Estates Act in Ireland, which had been found to work admirably well.

The 8th Section of the Bill was merely to do away with any doubt which might reasonably have existed, whether, under Act XI of 1859, lakhiraj tenures were or were not saleable for arrears of revenue. It simply provided that all sales of lakhiraj lands heretofore made should be as valid and effectual as if they were made in execution of decrees.

In carrying out the object which the Legislature had in enabling the proprietors of estates or of certain tenures to protect themselves from the effects of a sale of the superior estate, he had by the 9th Section extended it to the proprietors of tenures and to the proprietors of farms held for terms of years.

Section 10 had been introduced to obviate any difficulty as to the person by whom an estate or any subordinate tenure was to be sold. It provided that, where an estate was sold, it was to be considered as in the Collectorate of the Collector upon whose register it was borne; and where a tenure was sold, it might be sold quite independently of the revenue authority in whose Collectorate the estate of which it formed a part might be.

The 11th Section—and that was the only Section which could be considered as introducing any alteration in substance—gave absolute power of sale in all cases of revenue payable to Government in respect of any tenure not being an estate. The Council would remember that, under the definition, the term "revenue" included also rent payable to Government. The Section provided that after the sale of a tenure a certificate should issue, and it was afterwards provided that its effect should be the same as a certificate in respect of an estate proper.

Sections 12 to 14 enacted just the same provisions with regard to sales of tenures paying revenue or rent as, under Act XI of 1859, was provided with regard to estates proper paying revenue. It made the effect of the sale of the tenure by the Collector, in all respects the same as the sale of an estate under Act XI of 1859 for arrears of revenue proper.

In the 15th Section, both with regard to estates and tenures, it was provided that, after an estate had been sold, if there should be a deficiency, the Collector was to issue a certificate to that effect.

The 16th Section would probably be found, on consideration, to be unnecessary; he would not, therefore, trouble the Council with an explanation of its provisions.

The 17th Section provided, in the same way, with regard to demands other than revenue or rent, that a certificate should issue; and then the 18th and 19th Sections provided the effect of such certificate. After notice had been served on the person interested, who, under the 19th Section was to stand in the position of the defendant, the Collector being the plaintiff, the certificate would have the effect of a decree of Court under a prohibitory order issued, and an attachment executed, against the property of the defendant. Before proceeding to apply the provisions of Act VIII of 1859, which had been found to work so well, it was thought desirable to re-enact those provisions which had reference to the claims of third parties. Under Act VIII of 1859, when land had been attached, any person might come in and make a claim; on which the Court was to decide, not the question of right, but whether, when the attachment was issued, the land was in the actual possession or constructive possession of the judgment-debtor; and the claimant in any case would have to establish that he was in such possession, or that the judgment-debtor was in

possession as trustee for him. The question of right was not decided; but if the claim was dismissed, he was within one year to go to the Civil Court to establish, not the question of possessory title only, but the question of the right to the property. He (the Advocate General) thought it preferable, in lieu of merely extending those provisions by reference to Act VIII of 1859, to introduce a substantive Section by which any person aggrieved, not merely claimed possession, actual or constructive, but any person claiming a right should have an appeal to the Collector, and from his decision there should be an appeal to the Commissioner. In the event of the Collector and Commissioner deciding against the claimant, the result would be that the sale would go on, and the purchaser would acquire a title, subject to any title which any other person might be able to assert in a Civil Court within the time prescribed. Then the next Section provided that all the provisions of Act VIII of 1859 with regard to sales in execution of decrees, in respect of arrest in execution of decrees for money, in respect of execution by imprisonment or out of the jurisdiction of the Court, should apply to certificates made under this Bill.

The 23rd Section provided for the registry by the Collector of any tenure which had been sold, thereby putting it on the same footing, and precisely on the same position in law and in fact, as in the case of a judgment-debtor; and the 24th Section provided for the repeal of certain provisions of the older Regulations, which did provide to a certain extent a procedure for the recovery of arrears.

He did not conceal from the Council that the subject was one of extreme difficulty. To fit in the necessary or desirable supplementary provisions with Act XI of 1859, he had found to be an extremely difficult and delicate task; and he could not flatter himself with the idea that, although he had, had the assistance of the experience of the hon'ble member opposite (Mr. Dampier), of his friend the learned Assistant Secretary, and of the hon'ble members opposite (Koomar Harendra Krishna and Baboo Ramanath Tagore) who sat on the Committee on Mr. Schalch's Bill, the desired object had been obtained. But he (the Advocate-General) thought that, with the further consideration which the Bill would undergo in Select Committee and before the Council, a result might be obtained which would tend to the interests of the Government and of the public generally, and which would be more equally, more easily, and more uniformly enforced in defence of the rights of Government: and, still more, that the rights of persons interested directly or remotely in the subject of any sale which might be made in execution of the provisions of this law, or of Act XI of 1859, would be most religiously protected.

With those remarks, he begged to move that the Bill be read in Council.

KOOMAR HARENDRA KRISHNA said, with every deference to the statement made by the hon'ble and learned mover of the Bill, he did not think that the Bill was, strickly speaking, founded on sound principles. The Interpretation Section was the most important portion of the Bill. He called that the most important portion of the Bill, because he understood the Bill to be founded on those interpretations. The interpretations, as given in the Bill, were opposed to the general acceptation of such terms, and were not in consistence with the recognised definitions given in the previous laws. The terms that he referred to were "revenue," and "proprietor." The word "revenue," according to the Bill, was synonymous to the word "rent," and he thought it might be considered to include every other demand due to Government. He did not consider that "revenue" and "rent" were synonymous terms; and he was supported in his opinion by that of the highest legal authority in the country, lately given in his decision in what was known as the great Rent Case. The Chief Justice in that decision observed:—

"The word 'revenue' and the word 'rent' are used in the Code of 1793, in many places, in order to describe two very different things; the former meaning Government revenue, the latter meaning the rents payable to the zemindars by their talookdars, farmers, and ryots.

"It would, therefore, have been quite contrary to the rules contained in Regulation XLI of 1793 to use the word revenue" as applicable to the zemindar's rents, or the word "rent" to express the Government revenue.

But the use of the words 'revenue' and 'rent' in the same Code, for the purpose of designating sometimes the same thing, and sometimes two distinct things, would have been not only a violation of the express rule laid down in Regulation XLI of 1793, but in contravention as well of the principles by which the scientific use of language is regulated, as of the rules of legal construction."

The Chief Justice then referred to the opinion of Locke in his Essay on "The Human Understanding." Speaking of the abuse of words, Locke had said—

"Words fail to lay open one man's ideas to another's view, *first*, when men have names in their mouths without any determinate ideas in their minds, whereof they are the signs; *secondly*, when they apply the common received names of any language to ideas to which the common use of that language does not apply them; and *thirdly*, when they apply them very unsteadily, making them stand now for one, and by and by for another idea."

The same author had elsewhere said—

"It is hard to find a discourse written on any subject wherein one shall not observe, if he read with attention, the same words (and those commonly the most material in the discourse, and upon which the argument turns) used sometimes for one collection of simple ideas, and sometimes for another, which is a perfect abuse of language. Words being intended for signs of my ideas to make them known to others, not by any natural signification, but by a voluntary imposition, it is a plain, cheat and abuse when I make them stand sometimes for one thing, and sometimes for another."

He (Koomar Harendra Krishna) thought that in matters of legislation uniformity in language should always be observed. There could not be any other result but confusion, if in one Act we interpreted one word in one way, and then interpreted the same word in another way in another Act.

The next term to which he had referred was "proprietor." The word, according to the Bill, might include farmers or tenants paying directly the Government demand. Now he would ask the learned Advocate-General to explain whether a tenant or farmer in a Government khas mehal paying rent directly to Government would be considered the proprietor of that tenure?

[THE ADVOCATE-GENERAL explained that the intention was distinctly laid down, that he should be considered the owner of the tenure for the purposes of the Act and dealt with as such.]

KOOMAR HARENDRA KRISHNA continued.—The next point which he wished to refer to was Section 18. According to that Section, it would be found that the Collector, after he had filed the certificate of arrear demand in his office, was to consider himself to be the plaintiff, and the defaulter the defendant. Then, concerning the claims of third parties to the estate or tenure that was to be sold, the Collector was to adjudicate those claims, and his finding was to be considered as a decretal order of a Civil Court. He did not mean to say that the Collector, in deciding his own case, would not exercise his best judgment with equity and good conscience; but what he meant was, that if the two functions were kept separate—if the Collector had not to execute his own decree, and had no judicial powers—it would be better for the country. He thought the time had come when the functions of the executive and the judicial authorities should be separated as far as possible, and he thought he was not mistaken in his belief that the Government had already admitted that principle.

He did not wish it to be understood that he was opposed to the Bill. As regards the realization of revenue by the sale of defaulting estates for revenue proper, he thought the present Bill was an improvement on Act XI of 1859; but as regards the realization of rent, and the enforcement of the other demands set forth in the interpretation of the word "demand," he thought the Bill

was objectionable. He had already, in a previous speech, when Mr. Schalch introdueed his Bill, stated that it was perhaps not founded on sound principle that, before obtaining a decree, the Government, in cases where it stood only as a zemindar, should enforce the realization of its own demands by the sale of the tenures with regard to which arrears were due.

BABOO PEARY CHAND MITTRA said, the frank and candid spirit in which the hon'ble and learned Advocate General concluded his remarks, must be a source of satisfaction to the Council. We all participated in the desire that the Government should not be put to any great inconvenience or trouble in recovering its just demands; but it was also necessary for us to see that the mode by which that recovery was effected was just to itself and to the community. In the Bill different kinds of demands were classed with demands for arrears of land revenue, and definitions to that effect had been introduced. Some of those demands, as observed by the learned Advocate General, were thus classed in the existing law; but it was a matter for consideration whether the sanction of existing law could justify what might not be strictly right. The greaf principle of jurisprudence was that there should be a wide distinction between the prosecutor and the Judge, and that the two offices should not be united in one. In the Bill before us, in Section 18, the Collector was justly described as plaintiff or agent on behalf of Government. He instituted the suit, and his certificate was held to be equivalent to a decree in favor of Government. Then appeals lay to the Collector or the Commissioner; but both were agents of the Government. It was immaterial whether Government was to be considered in the same light as a private zemindar, or as Government; but *it was material* that the Bill should not ignore judicial enquiry. The Bill to all intents and purposes did ignore judicial enquiry, when the mere certificate of the Collector was sufficient to establish his claim, though the certificate, which was generally prepared by the Collector's establishment, might, in nine cases out of ten, not be right. The Section conferred on the Collector most arbitary power, and was likely to lead to much evil. He (Baboo Peary Chand Mittra) doubted whether legislation of such a character was to be found in the English or Continental Codes, and he thought it was clearly a retrograde move. It appeared to be special and exceptional on behalf of the Government in this country, and it interfered with the liberty of the people, inasmuch as it ignored judicial investigation. Any parallel to this legislation was scarcely to be found. This part of the Bill was therefore deserving of serious consideration, and he had not the least doubt that the hon'ble and learned mover of the Bill would see it corrected.

MR. ALCOCK said, he wished to ask the learned Advocate General a question with reference to the exceptions to Section 12. As he understood the Section, ryots paying other than fixed rents would be able to set the proprietors of estates at defiance. He considered that the purchaser of an estate at a revenue sale should possess summary powers, and should be able to eject ryots holding at other than fixed rents.

BABOO RAMANATH TAGORE said, he had the same objection to the Bill that he had to the one which this Bill had succeeded. As far as the realization of revenue was concerned, he had said before, and again said, that Government should exercise a summary power. But as to other demands, particularly those mentioned in the 6th, 7th, and 8th Clauses of Section 1, he would place the Government on the same footing as a private individual. It would indeed be very hard if the property of persons who became surety for others was liable to be sold without a regular investigation in a Court of Justice. It was true that the Collector was to be empowered to investigate such cases; but that Officer being an interested party, it was scarcely to be expected that his decision would be

satisfactory. Besides, there was another difficulty in the way of sureties. Suppose, for instance, a tehsildar or treasurer or mohurrir embezzled a large sum of money, and absconded without making good the defalcation, the surety would be placed in a very disadvantageous position, inasmuch as he would have no information for coming to a satisfactory settlement with the Collector. Either the surety must pay down what the Collector might demand, or allow his property to be sold summarily to the highest bidder, and also suffer imprisonment in case of deficiency.

The learned Advocate General, in order to justify the Bill, had stated at the last meeting that the power which the Bill conferred on the Government was not a new power, and that Government had exercised such power since 1799. He (Baboo Ramanath Tagore) did not wish to deny that such a power had existed, but he thought the Council should take into consideration the time when that power was conferred on the Government. In 1799 the Government of the country was in the hands of the East India Company, and at that time the public and the press had very little influence over the Government. The Government did what they liked, and accordingly made laws just to subserve their own purposes. But now the times had been very much changed. The press and public opinion was a protective power over the actions of the Government; and any law which the Legislature might enact underwent the severe criticism of the public and the press, and its merits and demerits were freely discussed; so that what was held to be justification of the law in 1799, might not be held to be a justification now, unless the law were found to be consonant to sound principles.

He would now say one or two words with regard to the details of the Bill. He fully agreed with the hon'ble member on his right (Koomar Harendra Krishna) that the definitions in the Bill were somewhat arbitrary, and required much correction; he would not, therefore, occupy the time of the Council in referring to them, but would leave their consideration to the Select Committee, who would no doubt do justice to them. He (Baboo Ramanath Tagore) also agreed with the hon'ble member on his left (Baboo Peary Chand Mittra) that Section 18 would give unlimited power to the Collector without any check or control. The Section provided that—

"Every certificate made in pursuance of the last preceding Section shall have the force and effect of a decree of a Civil Court, and the Collector, by whom such certificate shall have been filed, shall be deemed to be the plaintiff, and the person named as debtor therein shall be deemed to be the defendant."

According to that Clause, the Collector was the plaintiff; he would also be the Judge; he would, moreover, be the executive officer: in fact, he would be all-in-all. Now in his (Baboo Ramnath Tagore's) opinion such a coalition of power was incongruous, and would make the people form an unfavorable opinion as to the motives and intentions of the Government. He would therefore propose that a Section be introduced to the effect that if a person was dissatisfied with the decision of the Collector, he might go to the Judge, and have the matter properly sifted.

As regards the 19th Section, it gave the Collector power to seize all the property of a defaulter. This would appear to be a very harsh proceeding towards those who had become debtors to Government; because, if a certificate was for Rs. 300 or Rs. 400, for such a small sum the whole of the property of the defaulter, which might extend to two or three lakhs of Rupees, might be seized, and he would thereby lose his credit, and not be able to negotiate or mortgage that property. That would be a great hardship, and he (Baboo Ramanath Tagore) trusted that the learned Advocate-General would take this matter into consideration in Committee.

He would now proceed to Section 20, which gave a person the power of petitioning the Collector if aggrieved by the issue of a certificate. Looking to the mischievous tendency of this Section, he would suggest that it should be so altered as to give the person aggrieved power to petition the Collector before the certificate was issued. Because what would be the use of giving the defaulter the power of going before the Collector, when his character and credit had already been injured by the seizure of his property. It was just as when a house was on fire, and nearly burnt to ashes, and a fire-engine was placed in the hands of the unfortunate owner, after the whole mischief had been done, for the purpose of quenching the raging element.

In conclusion, he would observe that if this Bill were passed without material alterations, the functions of the Civil Court, so far as Government demands were concerned, would entirely cease; and would that, he asked, be just to the subject?

Those were some of his objections to the Bill, and he trusted that they would be taken seriously into consideration before the Bill was passed.

MR. DAMPIER said, from what had passed, he had no doubt that the Bill would be referred to a Select Committee. He therefore only proposed to make a few suggestions for the consideration of the learned Advocate General in Committee, and should leave him to deal with the objections that had been advanced. He should leave him to explain that the definition of the term "revenue" in the Bill did exactly fulfil the conditions of the construction put upon it by the learned Chief Justice in the judgment which had been referred to. He (Mr. Dampier) would, however, read another passage out of the same judgment which had just caught his eye—

"In the Regulations prior to the decennial settlement, no doubt the word 'revenue' included rent, not because the same word was intended to refer to two different things, but because at that time the rents of lands were Government revenue."

In other words, the rent paid by the tenant became revenue when it was paid directly to Government without the intervention of a zemindar; and that was precisely the construction put upon the word "revenue" in the Bill.

In the definition of the word "estate," he hoped the Committee would carefully consider the last Clause. It said that the word meant any land, or share in land, subject to the payment of an annual sum to Government, or in respect of which a seperate account might, in pursuance of Section 10 or Section 11 of Act XI of 1859, *or of any other law or usage*, have been opened. That definition, he thought, would require careful revision, for it was obvious that separate accounts of shares in estates might be opened for other purposes than those of the Collector, and by order of other authorities; as, for instance, by order of the Civil Courts. But what was meant in the Bill was that shares recorded under the special provisions of Sections 10 and 11 of Act XI of 1859, and no others, should be considered estates within the meaning of this Act.

Then, by the 2nd Section of the Bill, Section 53 of Act XI of 1859 was repealed. The Committee would have to consider whether Section 54 should not go with it.

It appeared to him that the 6th Section of the Bill, which provided for the personal service of notice at the place of residence of every proprietor of the estate, would really be impracticable to carry out. In a Note which had been printed as an annexure to the Bill, he had given his reasons for that opinion, which he hoped the Select Committee would consider. In many estates in Behar—often estates of small area—there were a number of proprietors, some 50 or 60, borne on the Register of the Collector. The Collector had no cognizance of any proprietors of the estate, except those whose names were borne on his Register. It would be difficult enough to serve each one of those 50 or 60 proprietors with the notice required, if they

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were alive and to be found; but out of that number some 25 had, perhaps, been dead for years; and others, whose names were not on the Register, had succeeded to their rights. He thought, therefore, that it would be unwise to insist on such personal service on each person. In the Note to which he had already referred, he had stated that if the notice were served at the Sub-Divisional Kutcherry, and the Kutcherry of the proprietor, which was well known throughout the estate, the notice would be sure to reach the proprietor. Whatever might be the provisions which the Select Committee might think proper to make, he would suggest that some Clause be introduced which would make it unnecessary for the Collector to stay giving the certificate of finality of sale, unless the omission proved to have taken place in the preliminary proceedings, were such as materially to injure the interests of the proprietor. If such a provision were not introduced, the legality of sales would constantly be contested on trifling and immaterial informalities; for instance, the Bill required that notices be posted in every Moonsiff's Court within the jurisdiction of which any portion of the estate was situated. One field of the estate might be situated in some Moonsiff's Court of which the Collector had no knowledge; and if the law were inflexible as to that being done, it would be a valid objection to the sale being final.

In Section 9 it was provided that it should be lawful for proprietors of tenures and of farms held for terms of years to cause the same to be registered according to the provisions of Act XI of 1859, although the same may not be held immediately of the proprietors of estates. When the learned Advocate-General had talked over the Bill with him (Mr. Dampier), that provision was not discussed, and he (Mr. Dampier) did not know on what grounds it had been introduced. If the Section stood, it would be necessary to make some further provision, because in Act XI of 1859 the Sections concerning registration, whether common or special, recognised only the recorded proprietors of estates; that was to say, notice was to be served on them before the tenure was protected, and the recorded proprietor *only* was to be given an opportunity of making objections; but it was evident that if a tenure of the third degree was to have similar protection, notice must be given to the proprietors of the tenures of the second degree, as well as to those of the first degree. Detailed procedure Clauses would be necessary.

By the 11th Section no such notice was required as was prescribed by the 6th Section. The two should be uniform.

In the 21st Section he would ask the Select Committee to lay down clearly and specifically whether the revenue authority above the Commissioner was to exercise any, and if so what power of interference on appeal or by way of revision.

The 23rd Section provided that whenever a Collector should have sold any tenure or farm, he should register the same in pursuance of the provisions of Act XI of 1859. It was, he thought, absolutely necessary to specify the Section under which the registration was to be effected, because under the Act, there were two kinds of registration; and he was not quite sure that the registration here intended was a registration under Act XI of 1859 at all. If it was, it would be necessary to specify whether the Section referred to common or special registry.

With those remarks he would support the motion for the reading of the Bill.

THE ADVOCATE-GENERAL said, he did not understand that any opposition was offered to the motion for the reading of the Bill, although observations, more or less strong, had been made on certain provisions of the Bill, and with regard to certain principles said to be involved in the measure. He was glad that those opposing views had been

ventilated at this early opportunity, and he was glad also to think that those views would be fully represented in the Select Committee on the Bill, which he should presently move to appoint. He would content himself now with making a very few observations on the criticisms on the Bill which had been made by hon'ble members who were opposed to some of its provisions. The suggestions made by the hon'ble member opposite (Mr. Dampier) would receive attention in Committee.

Exception had been taken to the definition of the terms "proprietor" and "revenue," and it was said, particularly with regard to the definition of the term "revenue," that it was inconsistent with the existing state of the law as laid down by the decision of the learned Chief Justice of the High Court. He was perfectly aware that in strictness it was so, and the sole object of the definition given in the present Bill was to obviate the difficulty and to remedy the confusion caused by the wrong use of terms, on which the Chief Justice had remarked in the decision, quotations from which had been made. The distinct object of the definition was to get rid of all the difficulties pointed out in that decision, and to establish what he (the Advocate General) conceived the unimpeachable principle existing prior to the permanent settlement, that there should be no distinction between rent payable to the general public for the occupation of land belonging to them, and any other branch of the public revenue; and to say that that was inconsistent with the use of terms in existing Acts, was merely saying that those Acts made distinctions which in principle were unfounded and which ought no longer to be continued. Advantage was attempted to be taken of an expression in a Section of the Bill, to the effect that the Collector was to be considered as plaintiff, and that the debtor in arrear was to be considered as the defendant; and then we had the usual commonplace that the Collector was deciding his own case. There could be nothing more futile than to make that objection to the present Bill. The simple reason for the provision referred to was a mere matter of form with reference to the application of the provisions of Act VIII of 1859, in order that where that Act spoke of the plaintiff and defendant, it might be known who were the parties referred to. The Collector was to be judge, not in his own case—it was idle to call it his own case—but whether or not there were arrears of revenue or of other demands due; to be judge whether or not the holding of the person against whom the certificate was to have the effect of a decree of Court should be sold or not. There was no question of the separation of the executive and judicial functions. The Collector was to be judge for this reason, that he (the Advocate General) could not conceive that there should be a greater curse to the country than that, after the revenue authorities had ascertained, in the exercise, he would presume, of the best of their means and knowledge and judgment, that arrears did exist, there should be an appeal to the Civil Court. He was sure, from his limited experience in Mofussil matters, that the result of such a system would be, that everybody who could, would resort to litigation, not only for the purpose of avoiding the payment of just claims, but for setting up collusive or hostile claims by means of the litigation which the system would open out. He was totally opposed to allowing any portion of the investigation to be made in the Civil Court, which would result in the withdrawal of the attachment or execution by sale of the revenue authorities. It was said that the principle under which the Bill proceeded was unknown in England or any country in Continental Europe. He could only say that any one conversant with the existing system of law in England, in France, and, he believed, also in Prussia, with regard to the collection of the public revenue, who would compare their stringency with the most stringent and arbitrary provisions of this Bill or of Act XI of 1859, would see that the provisions of the law as it existed here, and in this Bill, were leniency itself, as compared with the existing system in Europe. When you

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consider that in England a person liable to the payment of duties, could not only have his property sold, but also the property of his debtor, and the property of the debtor to that debtor, and of that debtor's debtor, and so on, to the fourth degree, the provisions of the present Bill, and of the Act which it proposed to amend, were, as it were, *nothing* compared to the stringent, not to say too stringent, law which existed for the protection of public demands in England and elsewhere. To take another branch of the revenue in this country. Was any objection ever made to the system here established under the Consolidated Customs Act of 1863? The Collector declared that such and such articles were liable to such and such duties. Was there an appeal to the Civil Court? There was an appeal to the Board of Revenue, and an ultimate appeal to His Honor the Lieutenant-Governor. That was provided, because it would be impossible that the business of the country could otherwise be carried on. He (the Advocate General) was positive that the business of the country could not be carried on anywhere, if the decision of the revenue authorities in matters relating to the collection of the public revenue, were to be referred to regular litigation in the Civil Court. It would not only be totally unnecessary for the protection of public debtors, but quite incompatible with the due protection of the public revenue.

As to what was said as to the power of attaching all the property of a defaulter in respect of what might be a small demand, and the uselessness of giving him an appeal after he had lost his credit, it appeared to him (the Advocate General) that there was very little force in that objection. He could not see how a man's credit could be affected by such a proceeding; his simple remedy was to pay the demand, and thereby obtain the release of his property. In giving the power of attaching all the property of a defaulter, it was not intended to give the power of disposing arbitrarily of the whole property for the recovery of a small demand. That must be left to the discretion of the revenue authorities, and any Collector who abused the discretion vested in him would no doubt fall under the censure of the Government.

He had made those observations on what had been said, more with the view of further discussion in Committee, than as desiring to be understood that the objections made to-day were finally disposed of. As he had said before, there had been great difficulty in the preparation of the Bill, and there would no doubt be still greater difficulties to overcome; and he hoped that the time which had been occupied to-day had not been lost. The difference of cost to the parties most interested, that was to say, the debtors to Government, which had resulted from the system of judicial determination and the system of decision by the executive revenue authorities, was such as to dispose of the case. Statistics had been prepared which showed the result. Under the system which the Bill proposed to restore, namely, the determination of questions of arrears of revenue, and other demands due to Government, by the revenue authorities, the cost in any one case did not exceed 12 annas. But, according to the system experimentally introduced, he found, from a tabular statement before him, that the charges were as much as this: the cost of stamp on the institution of the suit and the peon fees before and after decree, in small holdings up to 10 Rs. was Rs. 2-1; in holdings up to Rs. 15 the cost was Rs. 2-9; in holdings up to Rs. 20 it was Rs. 3-1; and in holdings up to Rs. 50, Rs. 6-1; that was to say, the cost amounted to a tax of very nearly 10 per cent. But in the determination of all cases by the executive authorities, the cost was no more than 12 annas. On every ground, therefore, even for the benefit of the parties whom it was sought to benefit by the substitution of the judicial for the revenue authorities, it was quite clear that it was better that the system of the Bill should be adopted.

There was only one other point to which he would advert, namely, the question put by the hon'ble member on his right (Mr. Alcock) with regard to the effect of sales as respects tenures under Clause 2 of Section 12. He should mention, generally, that the effect which that Section proposed to give to sales under the Bill of tenures, was precisely the same, neither more nor less, than the effect under Act XI of 1859 of sales of estates. What the second Clause provided was, that where a tenure had existed from the time of the permanent settlement, the sale of the estate, or of the superior tenure out of which that tenure was created, should not have the effect of forfeiting the tenure, but should simply enable the purchaser, under the sale, to have the same right of enhancement of rent as he would have had under the existing law; that was to say, it would put the purchaser in the same position in which he had been since the permanent settlement.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of Mr. Trevor, Mr. Thompson, Baboo Ramanath Tagore, Koomar Satyanand Ghosaul, and the mover.

POSSESSION OF NEW CHURS AND ISLANDS.

MR. THOMPSON moved that the Bill "to amend the provisions of Act IX of 1847 (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa)" be read in Council. In doing so, he said the Bill was embraced under three Sections, and contained, he thought, all that was requisite in the way of legislation to meet the object in view. That was, by the repeal of Section 7 of Act IX of 1847, to remove the obstacles which at present interfered with the right of Government to take possession of churs and islands in large and navigable rivers, such as those described in Clause 3, Section 4 of Regulation XI of 1825. He had endeavoured to show the Council on the last occasion, when he had the honor of moving for leave to introduce the Bill, that the law, as it stood, operated with hardship and injustice as against the Government, by compelling it to wait for the preparation of a new map, which could not take place till ten years had elapsed from the previous survey of a District; and that in that interval parties who had no claim or right or title to such islands, were in the habit of taking possession of the same,—an act which Government were powerless to avert or to stay.

He had thought it best, with the object proposed, to repeal by the 1st Section of this Bill the whole of Section 7 of Act IX of 1847, and by the 3rd Clause to re-enact it with such modifications as would empower the Government, on the appearance of such an island, to assert its right to take possession of the same, with a view to its subsequent disposal or settlement, irrespective of the proceedings of the revenue survey. It seemed to him that the Bill might have stopped there. The provisions of Act IX of 1847, and the declaration of the rights which Regulation XI of 1825 contained, would be sufficient for the adjustment of any disputes which might arise in suits before the Civil Courts. It would be found, however, from one of the annexures to this Bill (he alluded to the report of Mr. Grote, the senior member of the Board of Revenue, whose opinion on all revenue questions was entitled to the greatest respect) that in advocating the repeal of Section 7 of Act IX of 1847, which this Bill proposed to do, he went on to suggest that, if at any time within three years of the Government occupation of an island, its lands should stretch out and connect itself with the main land, the whole should be surrendered to the riparian owner. His remarks were as follows:—

"It would be expedient to re-assert the right of Government at once to occupy islands of all kinds. River islands may, on coming in contact with the shore, be unobjectionably settled with the riparian proprietor whenever the contact takes place. It is the public assessment on them, and not the proprietary profits, which Government is bound to secure. Under the present ruling, islands occupied as

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such by Government on the results of its new map, will be assessed by the periodical Settlement Officer, *but should they stretch toward. and connect themselves with the river bank, say three years after the settlement, they become part of the estate of the riparian proprietor*, whose revenue will not be subject to adjustment till the next survey."

He (Mr. Thompson) did not see the good policy of such a proceeding, nor could he discover upon what principles it was sought to be established. It was undoubtedly opposed to the provisions of Regulation XI of 1825, which regulated the determination of claims to accretions of land, on the broad general principle that lands gained by gradual accession from a recess of the river or of the sea should be considered to be an increment to the tenure of the person to whose estate they were attached.

It appeared to him (Mr. Thompson) that a chur or island, such as that described in Regulation XI of 1825, when taken possession of by Government, should be in the same position as any other estate of Government borne on the rent roll of a District; and that all accretions to it by the gradual retirement of the river or the sea should be equally at the disposal of Government, on the principles laid down in Regulation XI of 1825, as lands accreting to the property of a riparian landholder are an increment to his tenure. He would observe that this view of the law, which he had embodied in the 2nd declaratory Section of this Bill, had the support of more than one decision in the highest Court of Judicature in this country.

Of course cases of difficulty would arise, which might require a reference to Courts of law. But he did not see that additional legislation to meet any such difficulties was necessary. The case had suggested itself of accretions simultaneously extending from the main land to the island, and from the island towards the shore. He did not see that any legislative definition or declaration would meet the case better than what the law, as it existed, provided, *viz.*, that all lands gained by accretion should be an increment to the land to which it attaches. In the case referred to, it would be a matter to be decided by evidence how far an admitted accretion belonged to one side or the other. There was, in the reports of cases decided by the High Court, one which directly applied this rule in a similar difficulty, where, in delivering judgment, the learned Chief Justice, adverting to the rule that a person in possession of land was *primâ facie* entitled to it and to all increments to it, went on to observe that—

"it might be a very difficult question to determine in this case what portion of the land attached itself as an increment by gradual accretion to A's property, and what portion to lands in the possession of B. But the difficulty does not supersede the necessity. The plaintiff could only succeed on the strength of the evidence which he could adduce on this point."

Another question had been suggested, that, supposing an island should not be taken possession of by Government on its first appearance, and that in the course of a few years it was found in the occupation of a person who had no right beyond the right of possession, could Government recover possession then? In such a case if, at the time of the Government's assertion of its title, it was an island separated by water which was fordable, or if it was attached in any way to the main land, Government would have lost its right by not having taken action at once when the chur appeared. The *status* of the island, when Government asserted its title, would be the guide to a decision as to its right.

It was necessary to say that the present Bill only referred to churs or islands *thrown up* in rivers or in the sea, and in no way affected any other parts of Act IX of 1847. Nor would it apply to cases where a river by a sudden change in its course intersected an estate, thus forming an island of any portion of its lands. The land here, on being clearly recognized, would still remain the property of its original owner, as by clause 2, Section 4, Regulation XI of 1825.

BABOO PEARY CHAND MITTRA said, the principle on which the claim

of Government was based appeared equitable. But there was one remark which he wished to submit with reference to the 3rd Section of the Bill, which provided that any party aggrieved by the act of the local revenue authorities in taking possession of any island, should be at liberty to contest the same by a regular suit in the Civil Court. He would ask whether it would not be better that any person aggrieved by the act of the Collector or the Commissioner should have the option of carrying his grievance before the higher revenue authority, namely the Board of Revenue. Under the Section, as it stood, it was not clear whether the aggrieved party had that option. It merely said that the local revenue authorities should report their proceedings for the approval of the Board; and therefore, if the Section were made definite, and conferred on the aggrieved party the right of appeal to the Board of Revenue, and then, if not satisfied with the decision of the Board, to contest the same by a regular suit, it would be better for the individual whose interests might be affected by the proceedings of the local revenue authorities.

MR. THOMPSON said, the hon'ble member was scarcely consistent in the remarks he had just made, with the observations which he had addressed to the Council a short time since. He had then stated that all objections to the proceedings of the Collectors should be made the subject of a Civil suit before the award became final; and he had now told the Council that they should first interpose the decision of the Board of Revenue; and if the aggrieved party was dissatisfied with their decision, he should then be permitted to resort to the Civil Court. The words of the Bill were taken from Act IX of 1847, and he (Mr. Thompson) certainly thought that it would be unnecessary to delay the action of the Revenue Commissioner by interposing a power of appeal to the Board of Revenue as a necessary preliminary to a Civil action.

MR. KNOWLES said, it appeared to him that some provision might be made in cases where churs which were thrown up were taken possession of by Government, who thus prevented the adjacent proprietor from having the same access to the river which he previously had. He would therefore suggest the insertion of a Clause giving to the adjacent proprietor a free right of way through churs taken possession of by Government.

MR. THOMPSON remarked that the suggestion of the hon'ble member would be considered in Committee.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of Mr. Trevor, Koomar Satyanund Ghosaul, and the mover.

The Council was adjourned to Saturday, the 18th instant.

Saturday, 18th April, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, Presiding.

T. H. Cowie, Esq., *Advocate-General.*	Baboo Ramanath Tagore,
H. L. Dampier, Esq.,	H. Knowles, Esq.,
E. T Trevor, Esq.,	Baboo Peary Chand Mittra,
A R. Thompson, Esq.,	T. Alcock, Esq.,
S. S. Hogg, Esq ,	H. H. Sutherland, Esq.,
Kcomar Harendra Krishna Rai Bahadoor,	and Koomar Satyanund oGhsal.

SURVEY OF STEAM VESSELS.

MR. HOGG moved that the Report of the Select Committee on the Bill "to make further provision for the Survey of Steam Vessels plying within the provinces subject to the Lieutenant-Governor of Bengal" be taken into consideration in order to the settlement of the Clauses of the Bill, and that the Bill be considered for settlement in the

form recommended by the Select Committee. He said, when Mr. Schalch asked permission to bring in a Bill to amend Act V of 1862, it was simply intended that it should provide for the survey of steamers beyond the Port of Calcutta. In Committee the provisions of the Bill had been considerably extended, owing to suggestions that had from time to time been submitted to them. The Committee had accordingly provided that when a survey took place beyond Calcutta, it should be in the discretion of the Lieutenant-Governor to levy additional fees to cover the travelling expenses of the surveyors. The Committee had also provided for the examination of persons who desired to act as Engineers. In cases where any person had been the first or only Engineer of a steam vessel, or had attained the rank of first-class Assistant Engineer in the service of Her Majesty, he would be exempted from examination. By the 10th and 11th Sections, any person working a steamer without a certificated Engineer would be subject to a penalty. But the Committee had provided that those Clauses should not take effect till September, 1868, in order to give masters and owners of steam vessels due notice of what was required by the new law.

MR. ALCOCK said, it would be in the recollection of the hon'ble members who were on the Committee that when he had agreed to the Report, he had reserved to himself the right of proposing amendments in the Council.

THE PRESIDENT said, it would be more convenient if the hon'ble member addressed his remarks when the Council proceeded to take the Report of the Select Committee into consideration in order to the settlement of the Clauses of the Bill. The hon'ble member would then have an opportunity of proposing his amendments as the Clauses proceeded.

The motion was then agreed to.

Section 1 provided that all steam vessels plying on any of the rivers or waters of Bengal, "except steam vessels *between Calcutta and* some Port not in British India," should be liable to be surveyed twice a year.

MR. DAMPIER said, there was something in the wording of the Section which he thought had been overlooked. Under Act V of 1862 no steamer which did not come to Calcutta could be surveyed; but the present Bill would render steamers plying to and from other ports equally liable to be surveyed. Suppose now that the China steamers were to ply between Port Canning and China, was it intended that they should then become liable to be surveyed under the Act? If that was not intentional, he would suggest that for the words "between Calcutta and," the words "to and from" be substituted.

BABOO RAMANATH TAGORE asked if private steamers would fall under the provisions of the law. Many native gentlemen kept small steamers for their own use, and not for hire: He therefore wished to be informed whether those steamers would come within the operation of the law.

MR. HOGG said that under the existing law, he thought such steamers were liable to survey this Bill proposed no alteration in that respect.

BABOO RAMANATH TAGORE said, he would leave the Council to consider whether such a provision was just or otherwise, because steamers built for private use were built for the pleasure of the owner and were not used for purposes of trade or hire.

THE ADVOCATE GENERAL thought it was quite clear that the steamers alluded to by the hon'ble member who spoke last did not come within the operation of the existing law: they could not be said to *ply*. In his opinion, both Act V of 1862 and this Act were limited to steamers plying; that was to say, mercantile steamers

MR. DAMPIER then moved the substitution of the words "to and from" for the words "between Calcutta and" in the 11th line of the Section.

The motion was carried, and the Section, as amended, agreed to.

Sections 2 to 5 were agreed to

MR. ALCOCK said, he was quite aware that the fixing of any period of time for lifting the boilers of steamers from their bearings was a matter to be decided on with great caution. The interests not only of the lives of persons were to be considered, but also the interests of the owners of steamers. He did not pretend to say how often boilers should be lifted from their bearings; but we had it on the evidence of Mr. Walker, the Surveyor of Steam Boilers on Land, that six years was a proper time to render the lifting of a boiler compulsory in order to make a thorough examination of its condition. He (Mr. Alcock) would therefore suggest that if the Government Surveyor should have reason to believe that a boiler was in such a state as to require such an examination, he should call a Committee, of say three Engineers, to consider the question; and if they considered the lifting of the boiler necessary, it should be imperative on the owners of the steamer to cause the boilers to be raised, for the purpose of examination. He would move that the following section be introduced after Section 5:—

"It shall be imperative on the part of the Surveyor to cause the boilers to be lifted from their bearings at certain periods."

MR. HOGG said, if the Council would refer to Section 3 of Act V of 1862, they would find that the masters and owners of steam vessels were bound to afford every reasonable facility for conducting the survey. He should therefore imagine that if the Surveyor found it necessary to raise the boilers, it would be incumbent on the master to give that facility for the examination; and he thought that the law should in that respect be allowed to stay as it was.

MR. KNOWLES said, he also thought it would be very unnecessary to pass this Section. The Act had apparently worked well, and there seemed no reason now to render the periodical lifting of boilers compulsory. Sometimes, to raise the boilers, the owners would have to cut down nearly the whole of the deck.

MR. SUTHERLAND said, he wished also to say a few words in confirmation of what had fallen from the previous speakers about the harshness to ship-owners of compelling them to raise the boilers of a steam vessel. He thought that Act V of 1862 in its 7th Section contained a sufficient provision for the purpose now in comtemplation, as a special survey could, under that Section, be directed on certain classes of steamers; and under the 14th Section there was also a provision for a special survey of country steamers. The Surveyor could therefore, if he thought fit, order the boilers to be raised at any time; but to fix arbitrarily a periodical raising of the boilers of a steam vessel, appeared a very unfair and harsh proceeding towards ship-owners. In most instances inland steamers were uninsured; and it was the owners' interest to prevent the loss of the boilers by their explosion, and to take every precaution to ensure their being in good and safe condition.

THE ADVOCATE GENERAL said that, with reference to what fell from the hon'ble member in charge of the Bill, it appeared to him that it might be doubtful whether, under Act V of 1862, such powers as ordering the lifting of the boilers of a vessel, which he understood involved great expense and trouble, including the cutting of a great portion of the decks, were conferred. Under the 3rd Section, all that the owner or master was bound to afford to the Surveyer was a reasonable facility for conducting the examination. But he (the Advocate General) very much doubted if such exceptional power as the lifting of the boilers, would not go far beyond what the law provided. And although, under the 8th Section, the Lieutenant-Governor might frame rules as to the manner in which surveys should be made, the times and places of survey, and the duties of Surveyors, those rules could not be inconsistent with the provisions of the Act; and no rule would be consistent with the Act which directed that the survey should be made in any way which should make it incumbent on the master or owner to give more than "reasonable facility" for the survey. Therefore, as far as that went, he did not think the

object arrived at by the amendment before the Council would be attained by the existing law. At the same time he was entirely with the other hon'ble members in objecting to the amendment. He thought that the matter for which the proposed Section was intended to provide, might fairly be left to the self-interest of the owners of steamers.

MR. DAMPIER said, even if the wording of the Act would not give the Government the power of authorizing Surveyors to call on the owners of a vessel to lift the boilers, practically that power would exist, by the surveyor refusing to grant a certificate, unless he was satisfied as to the state of the boilers; and surely a surveyor would never wish a boiler to be raised unless there was real necessity for doing so.

MR. ALCOCK said, after the strong expressions of opinion on the part of hon'ble members, he did not think that he would be justified in pressing his amendment, and would therefore, with the permission of the President, withdraw it.

The motion was then, by leave, withdrawn.

MR. ALCOCK then moved that the following Section be inserted :—

"Both the owner and master shall be liable to a fine not exceeding one thousand Rupees in case their vessel, liable to be surveyed under Act V of 1862, shall leave, or attempt to leave, the Port of Calcutta without a Surveyor's certificate."

Section 5 of Act V of 1862 said, that the owner *or* master of a steam vessel should be liable to a fine of Rs. 1,000 if the vessel left port without having a certificate. Now, to the owner of a steamer it was simply a question of profit and loss, but to the master it was very different, and he should be equally liable if he attempted to leave port without a certificate. He therefore thought that both the master *and* the owner should be liable to the fine.

MR. SUTHERLAND said, he thought that the Section of the Act just referred to authorized the levy of the fine from either the master or the owner, and that the proposed amendment virtually gave the power of imposing a fine of Rs. 2,000. He submitted that a fine of Rs. 1,000 was sufficient for the offence.

MR. HOGG said, it seemed to him that the present law was sufficient to ensure the provisions of the Act being carried out. In the Bill as amended by the Select Committee, it was proposed that if an uncertificated Engineer was appointed to any steamer, both the owner and master should be liable to a fine of Rs. 500, which would make Rs. 1,000 in all. He therefore thought that the fine for leaving port without a certificate of survey should not be increased.

MR. ALCOCK said, he could not himself put any other construction on Section 5 of Act V of 1862, than that the master of a vessel could only be made liable in case of the owner's absence. The Section distinctly said that the owner *or* master would be liable to fine. He would, however, with the permission of the President, withdraw his amendment.

The motion was then, by leave, withdrawn.

Sections 6, 7, and 8 were agreed to.

Section 9 provided for the grant of certificates of service to persons who have "served" as first or only Engineer, or who have attained the rank of first-class Assistant Engineer in Her Majesty's Service.

THE ADVOCATE GENERAL suggested whether it was not rather too general to provide for certificates of service without any reference to time. He thought that service for at least one year or six months should be required, because a person might have served as chief or only Engineer for a day, and might be as incompetent as if he had never served. The fact of service was substituted for a certificate of competency.

MR. SUTHERLAND hoped that the fees taken for the examination of Engineers would be nominal: Engineers were a hard-worked and deserving class of men.

The Section was then agreed to, with the addition of the words "for a period not less than one year" after the word "served."

Section 10 provided that no certificate of survey should be granted to any vessel that had not a certificated Engineer.

MR. KNOWLES said that under this Section no steamer, of even 10 or 15 tons, could ply without a certificated Engineer. There were in the river several very small steamers like *beauleahs*, and he thought it would be very hard to require them to have a certificated Engineer in the same way as larger steamers.

THE ADVOCATE GENERAL said, he had already pointed out that a steamer belonging to a private person, which did not *ply*, was not subject to the provisions of Act V of 1862, and consequently would not fall under this Bill. If there were vessels of the class mentioned which were used for carrying passengers, he saw no reason why they should not be under charge of competent Engineers as well as the larger steamers. The Section must be read in connection with other Sections in the Act of which this Bill was to be a part.

MR. DAMPIER said, he would suggest that if the Council were of opinion that private or small steamers which did not work for hire or carry passengers, were excluded from the provisions of the Act, the hon'ble member in charge of the Bill should consider the propriety of making them so subject.

MR. HOGG said, he presumed that all steamers that went about the river were subject to the provisions of the Act, and it had, he believed, hitherto been so considered. The Council were not only to consider the safety of the proprietor of the steamer. Surely, it would be dangerous for small steam vessels to go about the river in charge of incompetent Engineers. He certainly always understood that Act V of 1862 was not confined to steamers plying for hire; but if the learned Advocate General was convinced that that was the proper construction of the Act, the subject ought certainly to be considered.

MR. KNOWLES said, as there seemed to be some difference of opinion on the point, he should propose to insert in the Section the words "plying for hire" after the words "any steam vessel."

MR. HOGG said, it seemed to him dangerous to insert those words, as there were some large steam vessels which plied only for the purposes of their owners, and which certainly ought, and did now, come under the provisions of the law.

THE ADVOCATE GENERAL said, the amendment proposed would except a certain class of steamers from the operation of the Section; but it was not clear that it would have the effect of removing the doubt considered to exist as to the meaning of the word "plying" in the whole of this Bill and in Act V of 1862. He thought it would be better to attain the object in view, if desirable, by a substantive Section. He would therefore propose to insert at the end of the Bill a Section to this effect:—

"Nothing in Act V of 1862, or in this Act, shall apply to steamers which do not ply with passengers or goods, or as steam tugs for hire."

MR KNOWLES said, he was willing to accept the learned Advocate General's amendment in preference to his own.

THE PRESIDENT said, no doubt the course proposed by the learned Advocate General was the most convenient; he would therefore postpone the consideration of the Section till the Council came to the end of the Bill.

The Section was then agreed to.

Section 11 provided a penalty on the owner and master of a vessel for plying without a certificated Engineer.

MR. SUTHERLAND said, there were often circumstances under which this Section might operate with harshness; particularly with regard to steamers on the Assam line, which generally had a complement of Engineers consisting of a Chief Engineer, a Second Engineer, and an apprentice; the latter, no doubt, doing most of the work under control of the others. Suppose the Chief and Second Engineer took ill; the steamer under this Section could not move until an Engineer could be sent up from Calcutta. The apprentice might be perfectly competent to take charge, and work the Engines, but, nevertheless, the

steamer would not be able to proceed. He (Mr. Sutherland) thought there should be a modification of the penalty in such cases.

THE ADVOCATE-GENERAL said, it must be remembered that all that the Section said was that, unless the steamer had a certificated Engineer, the owner and master would be *liable* to a fine. That did not render it incumbent on the Magistrate before whom information might be laid, to impose the fine under all circumstances. To make it still more clear that the Magistrate should have a discretionary power, perhaps it would be well to insert the words "not exceeding five hundred rupees" for the words "of five hundred rupees," which would leave a discretion to the Magistrate in remitting the fine altogether, if the circumstances were such as to justify his doing so.

MR. SUTHERLAND said, if some such provision was not made, the Magistrate might read the Section as giving him power to impose a fine of five hundred rupees, all mitigating circumstances notwithstanding.

The Section was then agreed to, with the amendment proposed by the Advocate General.

Sections 12 to 15 were agreed to.

MR. DAMPIER said, he was afraid that it was rather irregular now to refer to a matter that had already been discussed; but he observed that in the Proceedings of the Council connected with the passing of Act V of 1862, a question had been asked by Baboo Prosono Coomar Tagore as to whether private steamers would fall within the operation of the Act, to which Mr. Fergusson, who was in charge of the Bill, replied that the Act was intended to apply to private steamers; and he (Mr. Dampier) did not find that any thing more passed on that subject in the subsequent discussions on the Bill.

Some papers had just been placed in his hands which brought to notice another desideratum. In the case of the explosion of the boilers of the steamer "Enterprise," in which it was found necessary to have an enquiry made into the cause of the explosion, and a consequent examination of the machinery, when the bill for such expenses was presented to the owners of the steamer, they declined to pay it. He thought it was only fair, when such an examination should have been made, and it was found that the explosion was owing to negligence or misconduct on the part of the owners or their servants, that the costs of the examination should be paid by those by means of whose negligence or misconduct the explosion occurred. He would therefore propose, when the Bill came again before the Council, to ask them to consider some clauses to the effect that the owners of the steamer should pay the expense rendered necessary by the misconduct of their servants.

THE ADVOCATE GENERAL suggested that the proposed Sections should be read now in order to their publication before the next meeting of the Council.

MR. DAMPIER had no objection to do so, as he held in his hand a draft of the proposed Sections. He would move that the following Sections be introduced after Section 5:—

"Whenever any explosion shall occur on board of any steam vessel subject to this Act, it shall be lawful for the Lieutenant-Governor, if he shall think fit, to direct that an investigation of the cause of such explosion be made.

"Every person authorized by the Lieutenant Governor to make such investigation, may enter into and upon such steam vessel with all necessary workmen and laborers, and remove any portion of such steam vessel or of the machinery thereof, for the purpose of such investigation, and shall report the cause of such explosion.

"The expense of making such investigation shall, in the first place, be paid from the public Treasury, but in case the person making such investigation shall report that such explosion occurred in consequence of any negligence or misconduct of the owners of such steam vessel or of their servants, the amount of such expense so paid may be recovered from them as if the same were a fine imposed under the authority of this Act."

MR. HOGG suggested that the consideration of the Sections be postponed, and that, in the mean time, the Sections should be printed and circulated.

THE PRESIDENT said, he thought that some provision of the kind ssemed necessary, but as the hon'ble mover thought that the Sections were of a substantive character, he would postpone their consideration to the next meeting.

The consideration of the Sections was then postponed.

THE ADVOCATE GENERAL said, with the same object he would move the introduction of the following Section before Section 16 :—

"Nothing in Act V of 1862 or in this Act contained shall apply to steamers which do not ply with passengers or goods, or as steam tugs for hire."

The consideration of this Section, and of the remaining portion of the Bill, was also postponed.

PREVENTION OF CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA moved for leave to bring in a Bill for the Prevention of Cruelty to Animals. In doing so, he said the existing law on the subject of cruelty to animals was contained in Act IV of 1866, passed by this Council, for the regulation of the Police of the town of Calcutta, and the only provision that law made on the subject was this :—

"Whoever cruelly beats, ill-treats, abuses, or tortures, or causes or procures to be cruelly beaten, ill-treated, abused, or tortured, any animal, shall, for every such offence, be liable, on summary conviction before a Magistrate, to a fine not exceeding one hundred Rupees, and in default thereof, to imprisonment, with or without hard labor, for any term not exceeding three months"

And Act II of 1866, for the regulation of the Police of the suburbs of Calcutta, Section 40, Clause 16, rendered liable to a fine not exceeding fifty Rupees, any person who—

"shall cruelly beat, ill-treat, abuse, or torture, or shall cause or procure to be cruelly beaten, ill-treated, abused, or tortured, any animal."

In the Penal Code also there was a Clause which provided that—

"Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."

The omission in the existing legislation was that there was no provision as regarded the overloading of carts. He held in his hand a statement which had been very carefully prepared, showing the convictions for the ill-treatment of bullocks and horses from the year 1862-63 to the year 1867-68. Of bullocks in 1862-63, the convictions amounted to 400, and of horses 106; in 1863-64, of bullocks 547, of horses 208; in 1864-65, of bullocks 650, of horses 266; in 1865-66, of bullocks 432, of horses 390; in 1866-67, of bullocks 594, of horses 455; in 1867-68, up to the 24th March 1868, of bullocks 314, of horses 191: showing a total of 3,094 bullocks, against 2,021 horses. The returns of the Registrar of Carts showed that the number of carts plying in the town and suburbs of Calcutta amounted to about 5,800, out of which the convictions had been as stated above; the average yearly number of prosecutions in the case of bullocks was, therefore, about one-twelfth of the entire number of carts. That showed that, in spite of the vigilance of the Society for the Prevention of Cruelty to Animals, care had not been taken to avoid overworking and overloading.

The subject of the condition of cattle had occasionally engaged the attention of the Government here. In 1835, Lord William Bentinck drew attention to the subject. That led to some correspondence, but it did not appear to have led to any tangible results. We had, in 1863, an Agricultural Exhibition, and at that Exhibition cattle of different descriptions were exhibited; but its effects were of a sensational nature, because the efforts as to improving the state of the cattle had not been subsequently sustained; and he (Baboo Peary Chand Mittra) did not think that there had been any amelioration in the condition of cattle, and certainly not in the draught cattle of Bengal. Several

years ago we had shows held here by the Agricultural Society, at which cattle were exhibited; but those shows were discontinued, because the number of competitors was very limited. In 1864 (after the Agricultural Exhibition) the Government of Bengal made some enquiries as to the degeneracy of draught and other cattle, and the question was referred to the Agricultural Society, who appointed a Special Committee for the consideration of the subject, and that Committee, after patient and due enquiry, made a report, from which, with the permission of the Council, he would read a portion:—

"In respect to the second head, various causes, your Committee are of opinion, may be assigned for this degeneracy, the chief of which are (1) the poorness of food and inadequacy of even the kinds supplied; (2) the want of proper pasturage ground; (3) overwork, and being worked at too early an age; (4) being allowed to breed too young; (5) the scarcity of good bulls; (6) stinting of the calves of milk."

Over-work, and being worked at too early an age, was there stated to be one of the principal causes of the degeneracy of cattle; and he thought those who had seen cattle in the Upper Provinces would have noticed that the cattle there dragged carts with a great deal of ease; whereas here scarcely a cart passed without the driver pulling the bullocks by the tail, and beating them continually. There was no doubt that overloading and overworking were the chief causes of the present wretched condition of cattle here, and of their having frequently galled necks.

The load which was put on a cart here varied from 12 to 30 maunds; and it was not every pair of bullocks that could draw such a weight. From enquiries he found that at Bombay, where the cattle were of a better and much stronger kind, the load for a cart was from 42 to 50 Bombay maunds, which was equal to from 12½ to 15 Calcutta maunds. The subject of the weight to be drawn by bullocks, although not made the subject of penal enactment here, had, however, not been lost sight of by the Government in its different departments. In the Stage Coach Act, XVI of 1861, which provided for the registering and licensing of stage carriages, this principle was recognized, as Section 3 provided for the largest number of passengers, and the greatest quantity of luggage to be carried in each carriage, as well as for the number of horses by which it was to be drawn. Then, by the Rules of the Board of Revenue for the supply of carrige for troops, there was a provision of a similar nature, which stated that—

"A District Officer, when making over carriage to the Commanding Officer, is to be careful to deliver to him, in writing, a full statement of the rates of hire, back hire, demurrage, and the like, and of the weight to be carried by each cart, boat, or beast."

And in the general Regulations for the army sanctioned by the Government of India the average weight for an elephant or camel was 2½ maunds, for a two-bullock hackery 10 maunds, for three bullocks 20 maunds, four bullocks 30 maunds, and six bullocks 60 maunds.

As the Government had recognised the necessity of a proper weight being put on carts used for the service of Government, the absence of any provision of the kind in the Acts for the regulation of the Police in the town and suburbs of Calcutta could not but appear to be an omission. With the view of supplying that omission, the present Bill was submitted to the Council. It was his original intention to have introduced a provision to the effect that the Registrar of Carts should, after due inspection of the strength and carrying capacity of the bullocks belonging to each cart, certify, in the license granted by him half-yearly, the weight which should be carried on the cart; but he (Baboo Peary Chand Mittra) had since had the honor of submitting the Bill to the learned Advocate General, and in consultation with him, he was induced to substitute a provision of a general nature, leaving the whole question of weight to the good sense of the judicial officers: and if the Bill should be referred to a Select Com-

mittee, it would be for them to consider whether there should be a general provision, or whether power should be given to some officer to regulate the weight to be put on carts.

The other provisions of the Bill referred to the prevention of several barbarous acts practised towards different descriptions of animals, such as—

Tying together the legs of poultry, kids, and calves in a painful manner, and exposing them for sale in that state for hours in the sun without food and water;

Tying the forelegs of donkeys painfully tight, and leaving them to graze during the whole day;

Working wounded and diseased ponies at night;

Letting loose glandered or otherwise diseased horses, and leaving them to die, and thus endangering the lives of those in the neighbourhood:

And also for putting a stop to ram-fighting, the fighting of cocks with iron spurs tied to their legs; and, generally, to provide for the punishment of such acts of cruelty and the prevention of the cruel treatment of animals, on the grounds of humanity and justice.

The Bill was only intended to apply, in the first instance, to Calcutta and the suburbs; but there was given to the Lieutenant-Governor a power to extend its provisions to any part of the provinces under his control.

With those observations, he begged to move for leave to bring in the Bill.

MR. HOGG asked if it was competent for him at this stage to address the Council: it was his intention to oppose the introduction of the Bill.

THE PRESIDENT said, the hon'ble member might address the Council if he intended to oppose the Bill.

MR. HOGG said, in his judgment, it was altogether unnecessary to resort to legislation for the particular purpose for which the Bill appeared to be introduced. If the Council would bear in mind that the description of carts, and also the animals drawing them, varied in different parts of the country—one carrying easily 20 or 40 maunds, and another, from the inferiority of the animals used, and the inferior construction of the cart, being barely able to draw 10 maunds—it would be apparent that the attempt to define overloading by legislation would, under existing circumstances, be absolutely impossible. The hon'ble member had drawn a comparison between the usage in Calcutta and in the Mofussil, and he had stated that in the Mofussil cattle were not subject to the same kind of ill-usage as in Calcutta. That he (Mr. Hogg) thought was an erroneous impression. He believed the practice in the Mofussil was for carters always to be paid according to the number of maunds they carried, and therefore it was the direct interest of the carter to overload his cart, and his (Mr. Hogg's) experience was that it was the practice in the Mofussil to overload carts. But in Calcutta that was not the practice, as here carters were not paid by the maund, but by the trip; and a carter always objected even to putting a legitimate load on his cart, urging that the necks of his cattle would be galled, and he would be taken up by the Police. The practice, therefore, here was for the hirer to endeavor to overload, and the carter to object. He thought, therefore, that legislation was entirely unnecessary, and that it would only open a door to corruption and bribery. Even under the present system, the subordinate agents of the Society for the Prevention of Cruelty to Animals were sometimes found extorting; and the proposed legislation as to overloading would only lead to further extortion, although that objection, he was aware, might be taken to almost every law.

He would ask the attention of the Council to Section 67 of the Police Act, which ran thus—

"Whoever cruelly beats, ill-treats, abuses, or tortures, or causes or procures to be cruelly beaten, ill-treated, abused, or tortured, any animal, shall, for every such offence, be liable, on summary conviction before a Magistrate, to a fine not exceeding one hundred rupees, and in default thereof, to imprisonment, with or without hard labor, for any term not exceeding three months."

Baboo Pearg Chand Mittra.

If carters twisted the tails of their bullocks, or if the owners of donkeys tied their feet too tight, they could be punished under the existing law; and the other abuses referred to by the hon'ble member also came within the scope of Section 67 of the Police Act. He therefore thought that the Section in the Police Act was comprehensive enough, and that the Council ought not to attempt to legislate what loads carts were to be allowed to carry, and he should very much regret if leave were given to introduce the Bill.

THE ADVOCATE GENERAL said, as he had been referred to by the hon'ble member who moved for leave to bring in the Bill, he just wished to say a few words on the principle of the Bill. What had fallen from the hon'ble member opposite (Mr. Hogg seemed more to apply to questions of detail, as to the application or possible application of the proposed Bill, than to any real objection to the general principle involved, and that was what had to be considered now. The only matter to which his (the Advocate General's) attention had been drawn—for he was not now rightly acquainted with the proposed acts of cruelty to be specified, and he was very much inclined to agree with the hon'ble member opposite as to the absolute necessity of there being no such specification in the Bill—was the question as to the propriety of introducing some more specific enactment with regard to overloading; and, subject to further consideration, he confessed that his impression was that it was desirable to provide more specifically by enactment for the case of overloading, notwithstanding the use of the term "abuse" in the present Act. That was why he would support the motion for leave to bring in the Bill.

THE PRESIDENT said, he must say that, in his opinion, the hon'ble member who opposed the introduction of the Bill had not advanced reasons which he (the President) thought would justify the Council to refuse leave to bring in the Bill. The hon'ble member's principal reason amounted to a denial of the evil which the hon'ble mover of the Bill asserted to exist. Surely that was a point into which it was reasonable that the Council should enquire at a later stage, and not refuse leave to bring in the Bill on the mere *ipse dixit* of another member.

MR. HOGG explained that his chief objection was that legislation already existed.

BABOO PEARY CHAND MITTRA said, if he had thought that the existing legislation was sufficient, he would not have ventured to submit the Bills to the Council. "Overloading" was not "torturing:" it might perhaps be so in a general sense; but he thought it reasonable that it should be distinctly provided for. And as to the fear of oppression, there was equal danger in the enforcement of any law in the hands of the Executive Police. He did not deny that they did abuse their power; but he did think that that evil was small in comparison to the evil which this Bill was intended to prevent; and if the Police vexatiously interfered, they would be punished, and then they would not continue to abuse their powers. The effect of the measure would be that people would cease to overload cattle, and would provide better cattle, and we would not, as now, constantly see cattle groaning over overloaded burdens. In that desire, he had ventured to submit the Bill to the Council, and he hoped that the Council would fairly consider whether there existed any necessity for the Bill.

The motion was then agreed to.

LIGHTING OF THE SUBURBS OF CALCUTTA.

KOOMAR HARENDRA KRISHNA said, he was not prepared to make the motion, which stood in the List of Business, for leave to bring in a Bill to provide for lighting the public thoroughfares in the Suburbs of Calcutta, and he would therefore ask permission to withdraw it.

The Council was adjourned to Saturday, the 2nd May.

Saturday, May 2nd, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal Presiding.

T. H. Cowie, Esq., *Advocate-General.*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Harendra Krishna Rai Bahadoor;
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland Esq.,
and
Koomar Satyanund Ghosal.

SURVEY OF STEAM VESSELS.

MR. HOGG moved that the Bill "to make further provision for the survey of steam vessels within the provinces subject to the Lieutenant-Governor of Bengal" be further considered in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

On the motion of MR. HOGG, a verbal amendment was made in Section 1.

MR. DAMPIER said, he had had the honor to announce at the last Meeting of the Council that he should move the introduction of some Sections after Section 5. He believed he then gave the Council to understand that the Sections had just been given into his hands, and that he had been requested to move their introduction. He had since then considered the subject further, and one of the three Sections of which he had given notice did not appear such as ought to be introduced. He would now simply move the introduction of a Section empowering the Government to order a surveyor to enter any steam vessel on which an explosion should take place, and make a proper enquiry, for the purpose of ascertaining with whom the blame lay, and also for ascertaining and avoiding, if possible, in future, the cause that had led to the accident. He would therefore move that the following Section be inserted after Section 5:—

"Whenever any explosion shall occur on board of any steam vessel subject to this Act, it shall be lawful for the Lieutenant-Governor, if he shall think fit, to direct that an investigation of the cause of such explosion be made by such person or persons as he shall think fit. The person or persons authorized by the Lieutenant-Governor to make such investigation may enter into and upon such steam vessel with all necessary workmen and laborers, and remove any portion of such steam vessel, or of the machinery thereof, for the purpose of such investigation, and shall report the cause of such explosion."

The motion was agreed to.

THE ADVOCATE-GENERAL said, he had before the Council a motion to introduce a Section with the object of excluding from the operation of the Act private steamers. There had been some discussion on the subject, and a difference of opinion seemed to prevail as to whether it was necessary or desirable that the provisions of the principal Act with regard to surveys, and of this amending Bill as to Certificates for Engineers, should apply to vessels of the class to which he had referred. On the one hand, there was this to be said. He supposed there could not be a doubt that the general principle on which the Act of 1862 and this amending Act proceeded was, that, as steam vessels had a sort of monopoly, or at any rate had such signal advantages as regards the necessities of the public in the conveyance of passengers and goods, it was only fair and just to regard them as vessels in which the public had an interest, and to require the owners to take such precautions as the public safety and convenience might require. That general principle did not seem to apply to the case of steamers, large or small, the property of private owners, used for the mere purpose of amusement. On the other hand, there was force in what was mentioned that on board of such steamers, through negligence, overloading, or other circumstances, explosions might occur, the effects of which might not be limited to the owners or their servants, but might injure the public. Therefore, on consideration, it had been suggested to him, and he should adopt the suggestion, that instead of introducing a Section which would exempt private steamers alto-

gether from the provisions of the two Acts, it should be left optional to the Executive Government to exempt the owners of such steamers from complying with those provisions which had relation to the employment of certificated Engineers. To extend those provisions to all such steamers would indirectly render the employment of such steamers impracticable. It could not be expected that it would be worth the while of the owners of steamers of a few tons, kept for purposes of pleasure, to engage the services of such Engineers; but with the view of carrying out the suggestion with regard to protecting the public from danger, he (the Advocate-General) was willing that the provisions of the Act with regard to inspection and survey should apply to private Steamers. He would therefore, with the leave of the Council, propose to move, in lieu of the Section of which he had given notice, one to the following effect, to be inserted after Section 11, which provided a penalty for a steamer plying without a certificated Engineer, leaving steamers of all classes, whether public or private, to be subject to periodical inspeciion and survey :—

"It shall be competent to the Lieutenant-Governor of Bengal to exempt from the operation of Sections X and XI any steamer which does not ply with passengers or goods or as a steam tug for hire."

The motion was agreed to.

Section 16 was agreed to.

In Section 17 the date for the commencement of the Act was altered from the 1st of May to the 1st of June.

Section 18 was agreed to.

The preamble was passed after a verbal amendment; and the title was agreed to.

CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA moved that the Bill "for the prevention of Cruelty to Animals" be read in Council. He said, amongst the papers printed and circulated, there was a statement of convictions. He thought it necessary to observe that those convictions had been effected by the limited instrumentality of the Society here, and the statement was therefore not a full represenation of the magnitude of the evil which existed. But during the last 41 years (1824 to 1865) the convictions in London had been upwards of 10,000, whilst in Calcutta, during 5 years and 3 months, the convictions had amounted to 5,115. So, imperfect as that statement of convictions here might be with reference to the limited agency of the Society, the convictions in Calcutta were much larger than the convictions in London.

As to the course of legislation on this subject which had engaged the attention of Parliament from time to time, it appeared that in 1822 an Act to prevent the cruel and improper treatment of cattle was passed. In 1835 the Royal Society for the Prevention of Cruelty to Animals obtained an amendment of Mr. Martin's Act, whereby more extensive legislative powers were granted, and in 1839 it succeeded in procuring the insertion of a Clause in the new Metropolitan Police Act, by means of which the cruel and dangerous practice of using dogs to draw carts and other vehicles was prohibited within 15 miles of London; in 1845 an amendment of the law for regulating knackers' yards was made; in 1850 a new and much improved Act for the more effectual prevention of cruelty to animals was passed; and in 1859 an Act prohibiting the use of dogs as beasts of draught or burden throughout England was enacted.

So there had been progessive legislation by Parliament for the prevention of cruelty to animals. There had been from time to time general legislation; but when Parliament thought that general legislation did not meet particular cases, fresh legislation was resorted to to meet the evil in its different aspects. Therefore the argument used that whenever there was general legislation, there ought not to be special legislation, did not exactly hold good in the present case; because the English Act, which he held in his hand, *viz.*, 12 and 13 Vic. c. 92, and which was passed in 1850, was both general and special; that was to say, it was specific

as regards particular cases. Taking that as a model, the Bill had been drawn up which was now submitted to the Council.

The first Section defined what an animal was for the purposes of the Act; it was declared to mean any domestic or tamed quadruped, or any domestic or tamed bird.

The second Section was simply a recapitulation of the existing law, which it was proposed to repeal by the 9th Section of the Bill. The only addition was the word "overdrive," which was taken from Section 30 of Act V. of 1866, (B. C.) because whatever held good in the case of horses, ought to hold good in the case of bullocks.

The 3rd Section of the Bill provided a penalty for overloading. That had been specially introduced, because the existing law did not reach the root of the evil. There might be cases of overloading which might not assume one or other of the forms of cruelty provided for in the existing law; and Magistrates do and would differ in their opinion as to its construction. He (Baboo Peary Chand Mittra) declared that if he sat on the Police bench, and a case of simple overloading was brought before him, it would be his duty to dismiss such a case under the existing law. He begged to assure hon'ble members that overloading was the real cause of the evil. It passed with impunity, because it was thought not to fall within the cognizance of the law, and its effects on cattle were of a serious character. It was continued overloading that manifested itself in galled necks and other diseases; the prolonged suffering from a cruel load was calculated to perpetuate the degenerate condition of cattle; and in such warm weather it was to be doubted whether the hide of a rhinoceros could stand such continued overloading.

He had ascertained that there were two classes of *gharrywans:* the first consisted of those who drove their own carts; the other of those who employed others for the purpose. The former was a limited class. During the last twenty years, the traffic in Calcutta had so much increased, and the demand for carriage was so great, that those who were in the service of the principal *gharrywans* were tempted to take more on carts than they ought to do. Overloading therefore went on, and the carters escaped from punishment, because there was not a single case of overloading brought up yet, the Executive Police entertaining doubts whether any such case would be entertained by the Magistrate.

On the last occasion he had averted to the Stage Coach Act, which limited the weight to be put on Stage Coaches, and so late as 1866, in the Act for regulating Hackney Carriages, the same principle was recognized, *viz.*, that the license should state the *amount of luggage put on every carriage.* But from the general nature of the English and Indian Acts, and also considering that the evil was increasing, and could not be appreciably checked unless some specific provision was made, this Clause had been introduced.

The 4th Section was taken from the English Act, and provided a penalty for neglecting, which there could hardly be a doubt was necessary, to feed impounded animals.

The 5th Section provided a penalty on persons baiting animals, or inciting them to fight. The principle of this Clause was adopted in several Indian Acts, but they related more to the checking of gambling. The Clause was inserted here with a view to prevent the improper and cruel treatment of animals. It was in accordance with a Section of the latest English Act, and was needed here.

The 6th Section provided for the punishment of persons improperly carrying animals, and was also taken from the English Act. There were some who thought that it was perfectly immaterial how animals were carried; they were brought for sale, and would soon be butchered. This question had engaged the attention of medical men in England. Dr. Grainger said:—

"It may be proper, as there are some members of the Legislature present, that the real facts of the case should be known. It has

Baboo Peary Chand Mittra.

been said that these animals do not suffer from being carried for twelve, or eighteen, or four and twenty hours with their legs tied together, and their heads hanging down out of a cart. Some people had disputed whether that does cause suffering or not. I therefore think it due to the Society to say that I had the honor of being consulted, in conjunction with Dr. Burrows, of St. Bartholomew's Hospital, in order that we might settle the question whether the custom I have noticed is really a cause of suffering. In order to determine this point, we had some animals placed in the usual position in which they are carried to market, under the direction of some of the officers of this Society, and we then proceeded to ascertain what was the result. We found that calves in that position give all the indications so familiar to men of science, of intense suffering resulting from a gorged condition of the brain. We all know what the effect upon ourselves would be of hanging with the head downwards. It is a most painful and distressing feeling. But we ascertained, by direct observation, that these animals suffer intensely; that their head and face and throat become gorged and swollen; that there is a great increase of heat measured by the thermometer; and that eventually there is a condition approaching to what is called inflammation; and then, after the animal is killed, if the brain be inspected, it is found, as might be expected, and as we ascertained by occular demonstration, to be gorged with blood, and in a most unnatural condition. The conclusion at which my colleague and myself arrived, is that the animal sustains the most severe suffering; and this, notwithstanding one of those beautiful provisions of nature expressly guarding animals of this class from the effects of particular positions, and thus preserving the healthy condition of the brain."

The next Section (7) of the Bill was for the prevention of the practice prevalent here of permitting diseased animals to go at large or die in the public streets. And the 8th Section provided a penalty for employing an animal unfit for work, the principle of which was recognized in Act XVI of 1861, Section 9, where it was applied to horses.

The 9th Section proposed to repeal the existing provisions in the Police Acts; the 10th Section provided the limits within which the Act was to take effect; and the 11th Section gave power to the Lieutenant-Governor to extend the Act to any other places to which he might think fit.

The Bill no doubt was susceptible of improvement; but he believed that if a Bill of this kind was passed, it would materially reduce the suffering of animals, and produce a healthy educational and moral effect on the community at large.

With those remarks he hoped that the Bill would meet with the support of the Hon'ble Council.

MR. HOGG said, when permission was asked to bring in this Bill, he had stated the reasons which induced him to oppose its introduction. He had since then perused the papers on which the hon'ble mover had based his motion, but he had seen no reason whatever to alter the opinion he had expressed at the last meeting. He thought the Bill, if introduced, would not only be unnecessary, but that its effects would be mischievous. It was true that progressive legislation had been going on in England, but the hon'ble member had omitted to state that by that legislation it had never been attempted to arrive at the object aimed at by this Bill, *viz*, the enactment of a specific provision against overloading. It would, he (Mr. Hogg) thought, be absolutely impossible to define what was meant by overloading, and he submitted that it would not be wise to leave it to the discretion of each individual Magistrate to determine what constituted overloading. Doubtless, if any case of overloading amounted to positive cruelty or ill-treatment, it would fall within the provisions of Section 67 of the Police Act, which subjected a person to a fine of 100 Rupees for the offence. He therefore thought that when the advancing civilization of England had not attempted to define overloading, this Council should not attempt to do so.

In the annexure to the Bill, the statement of objects and reasons said:—

"The law at present in force for preventing cruelty to animals in Calcutta having hitherto failed to hinder the occurrence of numerous cases of very gross cruelty, it seems expedient to amend the law, so as more effectively to check such cases."

From that he (Mr. Hogg) gathered that the hon'ble mover of the Bill intended to imply that Section 67 of the Police Act had not been sufficient to

cover all cases of cruelty. He (Mr. Hogg) did not wish flatly to deny the correctness of that statement; but he was not aware of a single case having ever been brought before the Magistrates which it was found could not be dealt with under the existing law. If he was wrong, he should be happy to be corrected. He thought also, from the statement of convictions which had been referred to, that the working of the law had been eminently satisfactory, and that the prosecutions under the Act had been by no means few in number.

He would not further take up the time of the Council, but would content himself by voting against the motion.

THE ADVOCATE-GENERAL said, he wished to make a few observations on the Bill, as the hon'ble mover had made reference on the previous occasion to his having communicated with him (the Advocate-General) on the subject.

As regards certain portions of the Bill, he thought it was desirable that the Bill should go into Committee, because, as to what, in his opinion, was the most important portion of the Bill, *viz.*, the provisions against overloading, he confessed he had doubts whether or not, practically, it could be said that the general provisions of the Police Act could be satisfactorily applied to such cases. But it appeared to him—in theory he quite concurred with the hon'ble member opposite (Mr. Hogg) —that to make the Bill, as regards the prevention of the practice of overloading, of any practical use, it would be necessary to consider what limit or definition could be laid down as to what should constitute overloading.

Then he (the Advocate-General) also (although uncertain whether or not it was a Section the application of which would be of frequent occurrence) thought that the provision in the 4th Section for punishing persons neglecting to feed impounded animals, was applicable to cases which would not come under the general provision for ill-treatment; and the same remark, he believed, would apply to the 5th Section regarding baiting animals, or inciting them to fight.

But he thought that, supposing the Bill went into Committee, Sections 6, 7, and 8 would require consideration. It seemed extremely objectionable to provide penalties for particular species of ill-treatment, and to impose special penalties, because no one having common sense would say that carrying animals in a way so as to cause them unnecessary pain or suffering, was not ill-treatment.

The 7th Section, besides, was specially improper, because the practice which it was there attempted to prohibit, of permitting diseased animals to go at large or die in public places, was provided for by the Penal Code. By the 269th Section of the Penal Code an unlawful or negligent act likely to spread infection of any disease dangerous to life was punishable with six months' imprisonment or fine. Or the offence might fall under the 289th Section, by which negligent omission to take order with respect to any animal, so as to guard against danger to human life, was also punishable with six months' imprisonment. He therefore thought it was not only unnecessary but improper to pass the 7th Section.

With those observations he would briefly say that he would support the motion for the Bill being referred to a Select Committee.

DR. DAMPIER said, it seemed to him that the main objection to the Bill was as to the provisions against overloading. Before the Legislature was called on to extend the provisions of the existing law, he should be glad to know whether it had been found to be insufficient. The hon'ble Mover of the Bill thought that there was considerable doubt whether cases of overloading would fall within the law; but he (Mr. Dampier) wished to know whether any palpable case of overloading had ever been brought before the Magistrates, and whether any want had been felt.

THE ADVOCATE-GENERAL said, what he meant to say was that he

thought it desirable to make express provision with regard to the practice of overloading; he thought it was desirable that there should be some further suitable legislative provision.

BABOO PEARY CHAND MITTRA said, in answer to the question put, he might say that no attempt of the kind had been made, simply because there was no specific provision on the subject in the Act, and because it was believed that such a case could not be entertained by the Magistrates.

THE PRESIDENT said, in addition to other reasons which might induce the Council to allow the Bill to go to a Select Committee, it would have the effect of equalizing the law in Calcutta and the Suburbs, which at present, so far as he saw, was very unequal. Apparently, under the Suburban law, a man could only be fined to the amount of 50 Rupees, which, in case of non-payment of the fine, would involve only simple imprisonment for two months; whereas in Calcutta he might be fined to the extent of 100 Rupees, and in default of payment to imprisonment with hard labor for three months.

BABOO RAMANATH TAGORE said, he had no objection to the Bill being referred to a Select Committee, because some of the provisions of the Bill were of a laudable character. He admitted, however, that in the details the Bill required much amendment. By the definition section, the word "animal" was to be taken to mean any domestic or tamed quadruped, or any domestic or tamed bird; and the 2nd Section provided that every person who should cruelly and wantonly beat, ill-treat, torture, or overdrive, or cause to be beaten, ill-treated, tortured, or overdriven any animal, should be liable to a fine which might extend to 100 Rupees. According to those Sections, therefore, no one would be able to catch or purchase a bird, and imprison it for the purpose of domestication, for the Magistrate might consider the act to be "wanton," and fine the man who should contravene the law.

By the 4th Section it appeared that any person who should impound or confine animals and neglect to provide them with sufficient food and water, might be fined. There was a provision already in the Police Act which superseded the necessity of this Section, and if any person under the authority of the Police Act sent animals to be impounded, he should not be called on to feed them, because he was acting under the authority of a law, and it would be the duty of the Commissioner of Police to see that the animals were fed. The proposed Section was a work of supererogation. There were many other objections to the details, with which he would not, however, occupy the time of the Council; he thought that if the Bill went into Committee it might be much improved, and with that view he would support the motion before the Council.

The Council then divided:—

Ayes 10.	*Noes* 3.
Koomar Sutyanund Ghosaul.	Mr. Alcock.
Mr. Sutherland.	„ Hogg.
Baboo Peary Chand Mittra.	„ Dampier.
Mr. Knowles.	
Baboo Ramanath Tagore.	
Koomar Harendra Krishna.	
Mr. Thompson.	
Mr. Trevor.	
The Advocate-General.	
The President.	

The motion was therefore carried, and the Bill read accordingly.

BABOO PEARY CHAND MITTRA moved that the above Bill be referred to a Select Committee, consisting of Mr. Trevor, Baboo Ramanath Tagore, Mr. Knowles, Mr. Sutherland, and the mover.

The motion was agreed to.

LIMITATION OF APPEALS UNDER REGULATION VII. OF 1822.

MR. TREVOR moved for leave to bring in a Bill to amend the law respecting Appeals in cases under Regulation VII. of 1822. He said, the Section of the Regulation of 1822 which

it was proposed to amend, was Section 29, which gave three months for an appeal from the Collector to the Board of Revenue. When that Regulation was passed, the offices of Deputy Collector under Regulation IX. of 1833 and of Commissioner under Regulation I. of 1829 did not exist, and appeals were preferred directly from the Collector to the Board. Now, however, there were two, and sometimes three, appeals before a case was finally decided by the Revenue Authorities, and after that, the case could be taken to the Civil Court. The Bill which he moved for leave to introduce, would merely substitute one month for three months in Section 29 of Regulation VII of 1822. So far, therefore, as the Revenue Authorities were concerned, in cases of settlement or survey, no more than one month would be allowed for appeal, that was to say, one month for an appeal from a decision of a Deputy Collector to the Collector, one month for an appeal from the Collector to the Commissioner, and one month from the Commissioner to the Board of Revenue.

With those remarks, he begged to move for leave to bring in the Bill.

The motion was agreed to.

RECOVERY OF ARREARS OF REVENUE.

THE ADVOCATE-GENERAL moved that the period for the presentation of the Report of the Select Committee on the Bill "to make further provision for the recovery of arrears of Land Revenue and public demands recoverable as arrears of land revenue" be extended to the 16th Instant."

The motion was agreed to.

The Council was adjourned to Saturday, the 9th Instant.

Saturday, 9th May, 1868

PRESENT:

His Honor the Lieutenant-Governor of Bengal, Presiding.

H. L. Dampier, Esq.,	H. Knowles, Esq.,
E. T. Trevor, Esq.,	Baboo Peary Chand Mittra,
A. R. Thompson, Esq.,	T. Alcock, Esq.,
S. S. Hogg, Esq.,	H. H. Sutherland, Esq.,
Koomar Harendra Krishna, Rai Bahadoor,	and
Baboo Ramanath Tagore,	Koomar Satyanund Ghosal.

SURVEY OF STEAM VESSELS.

MR. HOGG moved that the Bill "to make further provision for the Survey of Steam Vessels plying within the provinces subject to the Lieutenant-Governor of Bengal" be passed.

The motion was agreed to.

LIMITATION OF APPEALS UNDER REGULATION VII OF 1822.

MR. TREVOR moved that the Bill "to amend the law respecting Appeals in cases under Regulation VII of 1822" be read in Council. The Bill, he said, was a simple one. It would interfere with no power that now existed, but would merely shorten the period for appealing from the Commissioner to the Board of Revenue, and from the Collector to the Commissioner, from three months to one month. It had been suggested to him to make one or two verbal alterations, and he therefore proposed, instead of passing the Bill to-day as he had intended, to refer the Bill to a Select Committee. He did not know that any further remarks were necessary, and would therefore now move that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee consisting of Mr. Thompson, Baboo Ramanath Tagore, and the Mover, with instructions to report within five days.

DISTRICT MUNICIPAL IMPROVEMENT.

KOOMAR HARENDRA KRISHNA moved for leave to bring in a Bill to amend the District Municipal Improve-

ment Act. The Statement of objects and reasons which had been circulated to all the members along with the Bill had, he hoped, sufficiently explained his motive and the expediency of the measure. Act III of 1864, otherwise called the District Municipal Improvement Act, had but two Sections as regards the assessment of houses, lands, and buildings: he alluded to Sections 26 and 27. In neither of those Sections was there any provision made with regard to unoccupied houses and lands, and the consequence was that from unoccupied houses the full rate of assessment was realized as in the case of occupied house. This procedure had caused considerable dissatisfaction. Not long ago a memorial, numerously signed by the rate-payers of the Suburbs of Calcutta, had been presented to His Honor the Lieutenant-Governor, complaining of the defective state of the law and of the hardships they were put to in having had to pay the full amount of the tax for unoccupied houses. His Honor, after a careful enquiry, had observed as follows:—

"As to the second complaint, *viz.*, the imposition of the assessment on unoccupied houses, the Lieutenant-Governor agrees with you that the District Municipal Act, in its present shape, is defective in requiring the full assessment of such houses, and giving the Commissioners no power of remitting any part of such assessment. The Lieutenant-Governor will, if any changes in this law be brought forward before His Honor's Legislative Council during the ensuing Sessions, be prepared to recommend the introduction into the amended Act of the more equitable provisions of the Calcutta Act, (Section 58, Act VI of 1863) by which a moiety of the assessment is remitted during the time that houses remain vacant."

The Bill he intended to bring in was but a transcript of Section 58 of the Calcutta Municipal Act, by which, as the Council was aware, only a moiety of the assessment was collected in such cases. The Bill proposed to grant exactly the same boon to the inhabitants of the Mofussil as that enjoyed by the people of Calcutta.

The motion was agreed to.

KOOMAR HARENDRA KRISHNA said, considering that the Sessions had already far advanced, and as it was desirable to make the provision he had pointed out in the substantive law before the Sessions closed, he begged to apply that the Rules of the Council be suspended in order that the Bill might be carried through its subsequent stages forthwith.

THE PRESIDENT having declared the Rules suspended, the Bill was read in Council, and taken into consideration in order to the settlement of the clauses.

Section 1 having been read—

KOOMAR HARENDRA KRISHNA moved the insertion of the words "and also of the re-occupancy" after the word "vacancy" in the 11th line.

MR. DAMPIER moved by way of amendment that the following words be added to the Section:—

"to the end of the quarter then current. Provided also that no notice of vacancy given under this Section shall have effect beyond the end of the quarter in which it may be given, unless a similar notice, of continued vacancy be given within the first fifteen days of the following quarter."

The amendment was carried, and the Section as amended agreed to.

Section 2 and the preamble and title were agreed to.

KOOMAR HARENDRA KRISHNA postponed the motion, which stood in the List of Business, for the passing of the Bill.

The Council was adjourned to Saturday, the 16th Instant.

Saturday, 16th May, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H Cowie Esq., *Advocate General.*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A R Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Harendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H H. Sutherland, Esq,
and
Koomar Satyanund Ghosal.

DISTRICT MUNICIPAL IMPROVEMENT.

KOOMAR HARENDRA KRISHNA moved that the Bill "to amend the District Municipal Improvement Act" be passed.

The motion was agreed to, and the Bill passed.

POSSESSION OF CHURS AND ISLAND.

MR. THOMPSON moved that the Report of the Select Committee on the Bill "to amend the provisions of Act IX of 1847 (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa"), be taken into consideration in order to the settlement of the Clauses of the Bill, and that the Clauses be considered for settlement in the form recommended by the Select Committee. He said, with the exception of the 3rd Section, in which a slight verbal alteration had been made, the first three Clauses of the Bill remained as they were. The 4th Section had been added to give what the majority of the Select Committee considered was the right construction of Clause 3, Section IV, Regulation XI of 1825, which referred to churs or islands thrown up in navigable rivers or in the sea, the channel between which and the mainland was not fordable at any season of the year. The disposal of such islands by that Regulation was vested in the Government. The 4th Section of the present Bill proposed to enact that the subsequent junction of any such island so taken possession of by Government should not affect the right of Government. The Section provided that—

"Any island which may have been taken possession of by the local Revenue authorities on behalf of the Government at a time when the channel between such island and the shore is not fordable, shall not be deemed to have become an accession to the property of any person by reason of such channel becoming fordable after such island shall have been so taken possession of."

That depended on the fact of Government having taken possession of the land in the condition and character of an island separated by deep unfordable water. Once having done so, the land was, as the law expressed it, "at the disposal of the Government," and the Government was capable of dealing with it by gift or sale, or by making a settlement for the payment of revenue. Such a construction, it appeared, was in accordance with the policy and principles of the existing law as laid down in Regulation XI of 1825, and certain decisions of the High Court supported the same view. The Committee had, however, the misfortune to find that one of their number, who was the owner of extensive property in a part of the country where islands were frequently being thrown up, differed on that point, and he (Mr. Thompson) thought he correctly described the hon'ble member's views when he said that the hon'ble member was an advocate of the opinion that the Government might rightly exercise the power of at once taking possession of churs and islands thrown up in rivers or in the sea; but whenever, by gradual accretions, such islands were joined to the mainland, they should be surrendered to the nearest riparian proprietor. The majority of the Committee were opposed to that view, and were of opinion that such claims should not be accorded by right to the Zemindar. Though he (Mr. Thompson) was not in a position to speak on behalf of the Government, he might safely say that Government was in no way desirous of retaining khas possession of islands thrown up in rivers; its

policy had rather been to dispose of such property; and in the case of islands, as described in this Bill, the Revenue authorities would always, in practice, recognize the claim of the nearest proprietor to a prior right to the purchase of the same or to a settlement of the lands.

The Council were aware that a good deal of correspondence had arisen on the subject of the Bill in the press, and he had had interviews also with several gentlemen on the subject; there was also a memorial from the British Indian Association which refered to this Bill. In the discussions which appeared in the public papers, objections were raised chiefly to the rules laid down in Act IX of 1847 for the assessment of alluvial accretions to zemindaries. But he (Mr. Thompson) thought that the adoption or rejection of the present measure would in no way concern that question; and certainly the general principle under which Act IX of 1847 proceeded was not one which the Council was now called on to discuss. It was too large and important a question to be entertained on this occasion.

There had been another Section introduced by the Committee, giving power to the Collector to lay out ways in any chur or island which might subsequently be connected to the mainland, and declaring that such ways should be considered public. That provision was introduced at the suggestion of an hon'ble member on the occasion when the Bill was read in Council, and was intended to prevent the inconvenience and loss a zemindar might incur from his estate being deprived of its river frontage.

The motion was put and agreed to.

Sections 1, 2, and 3 were passed as they stood.

Section 4 having been read—

BABOO RAMANATH TAGORE said, he was strongly opposed to this Section. It was, he thought, against the principle of Clause 3, Section 4 of Regulation XI of 1825. That Clause declared that when a chur might be thrown up in a large navigable river (the bed of which was not the property of an individual) or in the sea, and the channel of the river or sea between such island and the shore might not be fordable, it should, according to established usage, be at the disposal of Government. But if the channel between such island and the shore was fordable at any season of the year, it should be considered an accession to the land or tenure of the person whose estate might be most contiguous to it. But by the 4th Section of the present Bill, the effect of that provision would be completely destroyed. He did not know the object of Government in bringing forward this Section. Did they wish to become proprietors of land? He believed not. All that the Government wanted was their revenue. Under the existing law, both of 1847 and 1825, ample provision was made as to the power of Government in assessing newly formed lands, whether islands or accretions to the main land. Why then did we introduce this Section and destroy in a manner the good effect of Clause 3, Section 4 of Regulation XI of 1825? He (Baboo Ramanath Tagore) could not see what the object was. If this Section was expunged from the Bill, it would not put Government to any inconvenience. Under the Regulation of 1825 Govenment could take possession of an island such as that described in that enactment; but the moment the channel between the island and the mainland became fordable, the Government would have to surrender possession to the proprietor of the nearest estate, and the Government would only have the power of making a new assessment. It was all very well for private individuals to fight and secure as much as they could; but so far as the Government was concerned, the principle to be observed was different. He therefore thought that this Section, by which the Government sought to deprive the zemindar of a right which he had enjoyed since the permanent settlement, should be omitted, and he would move accordingly that Section 4 should be expunged from the Bill.

BABOO PEARY CHAND MITTRA begged to bring to the notice of the

Council that in Morley's Digest of Indian Cases, after citing several cases, there was a note well worth the consideration of hon'ble members:

"It may be added that in the common case of alluvion or increment by the recess of a river or a sea, the Indian law and usage correspond with those of England, and with the Civil law. What is gained by gradual accession is the property of him to whose estate the recess of the river or sea has annexed it. What is lost by the gradual encroachment of a river or the sea is a loss without reparation to the owner whose estate is thus destroyed."

The Section before the Council was contrary to the spirit of that ruling, and it would therefore be desirable to consider whether it could be retained with due regard to private rights.

MR. SUTHERLAND, while agreeing generally with many of the remarks just made, said, if he was not out of order at this stage in referring to it, he regretted that the Bill did not go further towards amending Act IX of 1847. When the Bill was introduced, he was asked to serve on the Select Committee; but as he was unacquainted with the subject, it never having come before him in the course of business, he feared he would not have been of service in assisting the Committee's deliberations, and he therefore declined acting. But since the Bill had been published in the newspapers, he had received several letters from Mofussil friends of large experience in zemindary matters, complaining very strongly of the hardships inflicted by the operation of Act IX of 1847. The amendment did not appear to him to have touched the special hardships of Act IX. The assessment for increment to estates being levied at current rates, and the rebate for diluvion or any portion washed away being allowed only at the rate of the perpetual settlement, struck him as manifestly unequal in its bearing. Loud complaints, too, were made of the conduct of the Ameens and their people in the re-surveys.

He still trusted that Act IX of 1847 as a whole might be re-considered by Government, and that a broad and liberal measure might be introduced to set the vexed question at rest.

MR. HOGG said, he did not perceive what advantage there was in introducing this Section. It seemed to him that, by Clause 3, Section 4 of Regulation XI of 1825, if an island was thrown up, and the channel between it and the mainland was not fordable, the mere fact of the channel subsequently becoming fordable would not interfere with the Government right to the island. If that was a correct view of the existing law, the use of introducing the Section which had given rise to the present discussion, was not apparent.

MR. THOMPSON explained that by Clause 3, Section 4 of Regulation XI of 1825, an island, while in the state of an island separated from the mainland by deep unfordable water, might be taken possession of by Government. Before Act IX of 1847 was passed, the Government could at any time have taken possession, and then, by Regulation XI of 1825, the island would be at the disposal of Government. But by Act IX of 1847, Government could not assert its title to the possession of an island which was thrown up in a river or in the sea, till after the approval of the revenue survey of a district, and no second survey of a district could be made till the expiration of at least ten years from the time of the previous survey. Act IX of 1847 had thus caused delay, during which, by the action of the river, what was originally an island, very often might be joined to the mainland, or be only separated from it by fordable water. Thus, when the Government went into Court, and claimed possession, the Courts had held that the status of the island *at the time the Government came into Court* must be the guide by which the right of Government ought to be determined, and therefore, though the land was originally of a character such as the Government could take possession of, the ten years' delay had prevented the Government's occupation, in consequence of the accretions, by means of which the island had

subsequently become part of the neighbouring zemindary. Under those circumstances, he thought it must be admitted that the ten years' rule had caused great hardship to Government. If the Government at any time took possession of an island in the status and condition of an island, subsequent accretions to that island were the right of Government, in the same way as accretions to a zemindary were increments to that estate under the law. He would give an illustration. The hon'ble member who had dissented from the majority of the Committee was a large proprietor of estates near large rivers. We would suppose that an island had arisen in the neighbourhood of his property, and that Government, after taking possession of it, had "disposed of" it by selling it to the hon'ble member. If, after five or ten year's occupation by him, the island became joined to the mainland, would not the hon'ble member consider it a hardship to have to surrender the island to the zemindar to whose estate the island was contiguous or attached? and yet that was the course which he advocated where the Government was concerned!

MR. DAMPIER said, in continuation of the remarks of the hon'ble mover of the Bill, he would observe that the substantive law on the subject was contained in Regulation XI of 1825. That was the law which declared the right as to accretions to the mainland, and as to islands. For certain reasons, it was found that the constant working of the law, frequent surveying and making enquiries, caused much harassment and annoyance. Therefore, for no other object than to save that harassment and annoyance, and not with any object of transferring rights as declared by Regulation XI of 1825 from one party to another, Act IX of 1847 was passed. That Act provided that when a district had been surveyed, and all rights settled, the settlement so made should remain in force, notwithstanding subsequent changes in the face of the country, until at least ten years had elapsed from the date of the survey, the sole object, he would repeat, being to avoid vexation and harassment, and not to transfer rights as declared by existing law. The object of Act IX of 1847 being this, it had happened, as was described by the hon'ble mover of the Bill, that the operation of the Act frequently entailed incidentally a transfer of rights; for if an island chur, the right to which, under Regulation XI of 1825, was vested in the Government, sprung up two years after a survey, and then in the interval, during which the Government was debarred by Act IX of 1847 from asserting its right (that was before the next survey,) became no longer an island, but connected with the mainland—the right which the law of 1825 deliberately declared to belong to the Government, became transferred to the zemindar of the nearest estate. It had been found that as regards islands, the law enacted in 1847, so far from preventing harassment and vexation to the people, had had the effect of causing disputes and affrays between parties neither of whom had any real right to the islands thrown up. This Bill had therefore been introduced on the ground that more harm than good was done to the public by delaying the assertion of the right of Government to such islands, and its object was simply to allow the Government to assert an indubitable right as soon as it accrued. As the hon'ble member on his left (Mr. Hogg) had said, he (Mr. Dampier) fully believed that Clause 3, Section 4 of Regulation XI of 1825 would have all the effect of this Section, even if this Section were excluded from the present Bill. But as the question had been raised and discussed, he should be extremely sorry to have the Section now struck out, because those who might hereafter read the law with the help of this discussion, would perhaps think that the Council was not deliberately and positively of opinion that the right to an island vested in the Government.

With reference to the remarks of the hon'ble member opposite (Mr. Sutherland), he might observe that the Government had considered, with the attention they deserved, the discus-

sions that had lately appeared in the public prints, as well as the memorials which had been presented by the Landholders' Association, and others, on the general subject of the evils of re-surveys under Act IX of 1847 after ten years. The subject was one of difficulty, and required much enquiry, and the Government was not yet in a position to come to a final conclusion on it. But the object of the present Bill was distinct from the general question raised in those discussions, and need not interfere with the future consideration of it.

MR. THOMPSON said, the memorial of the British Indian Association which took objection to the present Bill, and was supported by the hon'ble member opposite (Baboo Ramanath Tagore), appeared to be a remarkable document. They admitted that the right to the possession of the land as an island was vested in Government, and they admitted that there was no provision by the law, as it now stood, as to who should occupy an island chur of the kind under notice, during the intermediate decennial period, and that in consequence frequent quarrels and disputes might and do arise. Still the whole gist of their memorial was that the ten years' rule was a good one, because it interposed a delay by which the status of the island was often changed, and thus by gradual accretions and extensions the island attached itself to the mainland, and thus became a part of the estate of the neighbouring zemindar. It was not denied that in its island character the chur was at the disposal of Government; and if the Government chose to sell it, and subsequently the island became attached to the mainland, would not the right be still with the purchaser? Here the Government would have no concern in the matter, and he (Mr. Thompson) should think that there would be no question that in such a case all the accretions to the chur, held as a separate estate on the Collectorate Towjee, would be accretions to the property of the purchaser.

The question about the advisability of altering the law arose many years ago, when Mr. Sconce, who had had large experience of the operation of the law as to churs, wrote:—

"Section 7 of Act IX of 1847 applies to churs or islands the property of Government, and appears to confine the assumption of possession of a new chur to the completion of a new survey. But the nature of things seems to run counter to this construction. A new island rising in a large channel, and approachable only by boat, is no man's land. By law, the title is with Government only; and it would seem that Government should assert both possession and title whenever the opportunity presents itself. To the best of my belief, this is the practice in the district of Bullooah,—a district which was, and probably is, most fertile in new churs; but at any rate, the proper course to be followed in such cases, in Bullooah or elsewhere, may deserve consideration. Possibly, the law may mean that a Collector might watch the growth of a chur for ten or more years; might see one man and then another enter into occupation; but, nevertheless, that he who alone had legal title should keep aloof. In the case of a quarrel, it might even be the fate of a Magistrate to declare that neither of two claimants had a right of occupancy, and to offer the disputed land to the Collector, who by law could not take possession. There seems to be something so unreasonable in this course of proceeding, that if dictated by the law, possibly the law should be changed."

That unreasonable proceeding was what we now wished to do away with, by repealing the ten years' rule. It had been alleged by the British Indian Association that the present rule was a fair one, because zemindars suffered so much from diluvion, and therefore zemindars should have the chance of the eventual proprietorship of such islands to make good their losses. He (Mr. Thompson) distinctly denied that the possibility of islands attaching themselves to estates, and thereby compensating for losses by diluvion, formed any part of the consideration upon which Act IX of 1847 was passed. It was a law based on considerations of compensation and balance. But the nature of this was, as an hon'ble member (Mr. Dampier) had explained, that whatever accrued to a zemindar's estate during the ten years, should remain in his possession free from public assessment; and for what was lost by diluvion during that period, there should be no diminution of Government revenue. The loss in one case should be

balanced by the gain in the other; but the question of islands, and the manner of their occupation, was provided for in quite a distinct Section, and was no element in the considerations of the compensating principle upon which the law under review was passed.

Apart from this, it seemed to him (Mr. Thompson) very remarkable that the British Indian Association, admitting and recognizing throughout their letter the principle referred to of compensation and balance, should conclude their suggestions as follows :—

"The Committee are humbly of opinion that the present opportunity should be taken to remove the blot which disfigures the otherwise excellent law of 1847 It gives the zemindar no power to claim abatement in case of loss by diluvion within the decennial period."

The principle of gain and loss being admitted, it seemed rather peculiar that the Association should claim abatement of revenue in cases of loss, when no assessment was to be made for accretions during the same period.

BABOO RAMANATH TAGORE said, if he had rightly understood the hon'ble mover of the Bill, he thought that the Government had the power of selling an island after taking possession. He (Baboo Ramanath Tagore) denied that right. He said that the Government had no power to sell an island of which it might take possession under the existing law. Under Clause 3, Section 4 of Regulation XI of 1825, when an island was thrown up, Government might take possession, but the moment the channel between it and the main land became fordable, the island must be given over to the zemindar near whose estate the island had formed. The law of 1825, as he understood it, contemplated that Government should act as trustees; they should take possession, and give it over to the zemindar. He did not contend that Government had not the power of assessing the land. He said that they had as much power of assessing an island as they had of making a permanent settlement. But he questioned the right of Government to take the island and lay out money on it, or sell it. The British Indian Association, therefore, said that Government having at present no power to take possession or interfere with any island until the next survey, the best course would be that Government should take possession as trustees. If after ten years the island attached itself to the mainland, it would go to the proprietor near whose estate the island had formed. Under the proposed scheme, the proviso in Clause 3 of Section 4 of Regulation XI of 1825, would become entirely nugatory: the island would become the perpetual property of Government. That was his real reason for opposing the 4th Section of this Bill. He said, let the Government enjoy what the law gave them; but why give them a right which they never had?

MR. TREVOR said, a very few words would tend to show that the hon'ble member on his left (Baboo Ramanath Tagore) had quite misunderstood the meaning of Clause 3, Section 4 of Regulation XI of 1825. The Clause must be read as one. It began with asserting that when a chur or island might be thrown up in a large navigable river, it became the property of Government. Then it went on to say: But if the channel between such island and the shore was fordable at any season of the year, it should belong to the person whose estate was most contiguous. The question was to what time did that apply? For an answer to that, you must look to the opening words of the clause "when the chur or island is thown up," &c. If at that time the channel were fordable, the island should be considered an accession to the land of the proprietor whose estate was most contiguous. But if at the time the island appeared there was an unfordable channel on both sides, then the first part of the Clause solely applied, and the island was at the disposal of Government. The present Bill, in his (Mr. Trevor's) opinion, in no way contravened either the right of Government or of individuals, conferred by Clause 3, Section 4 of Regulation XI of 1825.

It, on the contrary, appeared exactly in accordance with that law. He therefore hoped that the hon'ble member would agree to the passing of this Bill.

THE ADVOCATE GENERAL said, he wished to say one word in support of what had fallen from the hon'ble member who spoke last. The only doubt he had with regard to this Section was as to its necessity. But after the strong opinions expressed, he thought it was in every way desirable that the Section should stand to avoid possible doubts But for such opinions, he should have thought nothing could possibly be clearer than that the Legislature in Clause 3, Section 4 of Regulation XI of 1825 referred, and referred only, to the status of the island at the time of its original formation—that the right of the Government depended on the consideration whether the channel was then fordable or not; it was not to remain contingent or fluctuating on any subsequent condition of the channel.

The Council then divided on the motion to omit Section 4 :—

Ayes 4.	*Noes* 9.
Koomar Satyanud Ghosal.	Mr. Sutherland.
Baboo Peary Chand Mittra.	Mr. Alcock
Baboo Ramanath Tagore.	Mr. Knowles.
Koomar Harendra Krishna.	Mr. Hogg.
	Mr. Thompson.
	Mr. Trevor.
	Mr. Dampier.
	The Advocate-General
	The President.

The motion was therefore negatived, and the Section was passed after a verbal amendment.

Section 5 empowered the Collector to lay out public ways in churs and islands.

MR. DAMPIER said, he would ask the hon'ble mover of the Bill to explain exactly what power it was intended to give to the Collector by Section 5 of the Bill. The Council had accepted it as the law that an island once thrown up was the absolute property of Government. The Government might therefore of course sell or otherwise dispose of it. He (Mr. Dampier) would apply this Section to the case of such an island being sold by Government, and of which the purchasing zemindar had been in possession for several years, and had covered the land with sub-tenures, and so on. Suddenly the channel on one side between the mainland and the island became fordable. He wished to know what was to be the power of the Collector to interfere with the ryots and other persons who had acquired rights in the soil. Government had the power to take up land for roads under the existing law; but because the status of the land was originally insular, was the Collector to have absolute power for all time to lay out roads and ways?

MR. THOMPSON said, the Section was introduced on the suggestion made by an ho'nble member (Mr. Knowles) when the Bill was read in Council. On the junction of an island with the mainland it would in many cases operate hardly upon the zemindar that he should lose his river frontage; and it was thought that some provision of law should be made by which the riparian proprietor should have access to the river. The objections brought forward were certainly strong in the case where a chur was sold by Government.. The Section would give the power to any proprietor to call upon the Collector to make a road across the island, though Government might have no property in the chur; but he thought the principle of the Section was right, and that where a river frontage was lost to a landed proprietor, some provision should be made to afford access to the river. Perhaps it would answer if a Clause were inserted providing that such roads should be made at the expense of the applicants.

MR. DAMPIER said, subject to any wish that there might be to have a Clause differently framed, he would move the

omission of the Section. He did not say that the Government should not be obliged to make such roads where the right of Government only was affected; but as the Clause stood, the power was unlimited and undefined, and, whatever it was, extended to the rights of all parties.

THE ADVOCATE GENERAL said, he should support the amendment, if only on this ground, that the Section as it stood might possibly involve a principle which it might be desirable to have carried out, but which could not be done by this Section. The Section went too far: *first*, as the power of the Collector to interfere was not limited to the period during which the island was in the possessson of Government. Again, as the Section stood, it applied to all islands, and might apply to islands never taken possession of by Government. The island might be an accretion to the estate of a neighbouring zemindar, and why should he be allowed to call on the Collector to provide ways?

MR. KNOWLES said, there was no doubt a great deal could be said on both sides. If some such Clause were not introduced, the neighbouring zemindar would suffer much greater hardship than the new proprietor. The Collector could see that too much inconvenience was not suffered by the proprietor of the new island, and he (Mr. Knowles) would suggest that the Section be allowed to stand.

THE PRESIDENT said, it seemed to him that the last objection taken by the learned Advocate General was fatal to the Section as it stood. He (the President) would therefore vote for its being omitted. But he should be glad to see a different Section, somewhat on the same principle, introduced afterwards.

MR. THOMPSON intimated his intention of submitting a Section for the approval of the Council before the Bill was passed.

The motion for the omission of Section 5 was then agreed to, and the further consideration of the Bill was postponed.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER moved that the Report of the Select Committee on the Bill "to amend and consolidate the law for the regulation of Police in Towns under the control of the Lieutenant-Governor of Bengal, and for the conservancy and improvement thereof" be taken into consideration in order to the settlement of the Clauses of the Bill, and that the Clauses be considered for settlement in the form recommended by the Select Committee. In doing so, he said, the Report of the Select Committee had been some days in the hands of hon'ble members. When he had the honor to move that the Bill be read in Council, he said that in consideration of the wide range in degrees of advancement, and in the characters, of the Towns to which he proposed the law should apply, he had not up to that time been able to devise any provisions which should be applicable to all such Towns, and which should give to what were then called Punchayets anything more than a consultative position. He had said that if in Committee or elsewhere any hon'ble member could suggest any provisions by which larger powers could be given, he should be happy to see them introduced. That object, he was glad to say, had been attained in Committee.

The main points in which the Bill had been amended had been stated in the printed Report of the Select Committee; he should therefore now only notice two or three of the chief of those points. The first was the omission from the Bill of the power to impose a rate on the annual value of property within a Town. Such an alternative mode of assessment was allowed by Act XX of 1856; but the Committee had accepted the principle that where a Town was not ripe for the introduction of the District Municipal Improvement

Act, the house and land property in such Town might be assumed not to have reached that value which could make them proper data for an assessment for municipal purposes. The Committee had therefore limited the tax under the Bill to the other mode which had been in force under Act XX of 1856, *viz.*, an assessment according to the circumstances, and the property to be protected, of the person liable.

The Bill, when laid before the Select Committee, contained a provision that the Punchayets should assist the Magistrate with their advice only. In Act XX of 1856 they were only vested with the power of making the assessment, and were to report Chowkeydars when absent from duty. They had nothing to do with the works that were to be carried on out of the surplus of the tax after paying for the Police. The Select Committee, in the body of the Bill, had provided that the Town Committees, which were to take the place of the Punchayets, should have consultative powers, and consultative powers only; but in view, as he had said, of the large range and difference of character of the Towns to which the Bill would be extended, Sections had been introduced which would enable the Government to vest any such Committee, of which the Magistrate should then be Chairman, with any of the powers which the body of the Act vested in the Magistrate himself. Sections had been introduced as to the constitution of these Local Committees, enabling the Government to lay down different rules for the appointment of members of the Committees in different Towns, according to the stage of advancement which each Town might have reached. Unless any other mode of appointment were prescribed, the Magistrate, with the sanction of the Commissioner of the Division, was to nominate the members of the Committee; but provision was made for the election of the members when the Government had reason to believe that the Town was far enough advanced. Those members who were not so ex-officio, were to retire in rotation, one-third going out every year, but were eligible for re-appointment. At the urgent instance of their native colleagues, the Committee had taken away the penalty for refusing to serve on a Punchayet. That had been done in deference to native feeling on the subject. The native Members of Council appeared to think that natives of respectability would consider the mere existence of a Section in the Act prescribing penalties for a refusal to serve, to be an indignity to gentlemen of respectability who were likely to be chosen as members. It could not be denied that in working the proposed law the Government would have to rely materially on the co-operation of the native community. Therefore, at the urgent instance of the hon'ble members who represented the native community, the Select Committee had struck out the penalty Clause. The Committee had given power to the Government to introduce certain modified provisions for conservancy, and had inserted Clauses to prevent difficulties arising from mere informalities. It was his (Mr. Dampier's) wish to give the Government power to extend to places which might be brought under the operation of this Bill, according to their requirements, any of the Conservancy Clauses of the District Municipal Improvement Act. If the Committee had agreed to that, the necessity of retaining some 20 Sections of the present Bill would have been saved. But he could not carry his own views in Committee, and intended to propose to the Council an amendment on the point.

The consideration of Section 1 was postponed.

Section 2 was agreed to, after the omission of the words "not being a cantonment" in the 3rd line.

In Section 3 the words "so far as the same relates to towns as therein defined," in the 8th and 9th lines, were struck out.

Section 4 was agreed to with the addition of the word "only" after the word "agriculture" in the 6th line.

Section 5 provided for the formation of Unions.

MR. THOMPSON moved that this Section be left out. He said, he objected to the principle of the Section. He considered all systems of grouping, whether for purposes of representation, as suggested in higher places, or for Conservancy and Police as in this Bill, were bad in principle. The principle of this Section had been in force since Act XX of 1856 had been passed, and experience had shown that whatever amount of care or supervision was exercised, the result was always the same, that larger places benefited solely at the expense of the smaller places which composed the union; and the collections, intended equally or nearly equally for places paying the assessment, were appropriated, in nearly every instance, to those places which had the largest interests and influence in the distribution of the funds. The Hon'ble Mover of the Bill had adverted to those inequalities in his own speech on the introduction of the Bill, and had given us some experiences of his own as a Commissioner of a Division, which told strongly in support of his (Mr. Thompson's) contention. Another hon'ble member had also instanced similar cases. The present Bill, it was true, provided some restrictions in the power of forming unions, and had limited the distances within which unions might be created, and so far it was an improvement; but he (Mr. Thompson) was still opposed to the principle as a bad one, and one which would always work badly. The places to which this Bill would apply would in most cases be remote from the head quarters of the district, and there would be no check against inequalities and improprieties, such as had too often been experienced already where the system of unions prevailed. He would remind the Council that they were coming to some very formidable Sections in the Bill, providing complicated machinery and details for the conduct of business; and it was very difficult to realize how it would be practicable to carry on the business which the Bill required, where the Members composing the Town Committees had to meet together from distant places, and to bring into harmony their differing interests and opposite claims. To show how the system had worked hitherto, he would beg to refer the Council to a petition from the inhabitants of certain villages near Moorshedabad, which was printed as an annexure to the present Bill. They said:

"That your petitioners are inhabitants of certain villages, situated on the west bank of the River Bhauggirutty, in the District of Moorshedabad, and have been subject to the provisions of Act XX of 1856, the introduction of which, however, at an early date had not been very generally known to them, a greater portion of them being people in very low circumstances of life, till the increase of the taxes from year to year disabused their minds; for heretofore they were under the belief that it was a tax imposed simply to defray the charge of maintaining Chowkeedars."

That since the past four or five years, the tax has been so increased as to make it to be felt a grievous hardship by the inhabitants, some of whose taxes were increased all on a sudden from Re. 1-8 a year to Rs. 6, and in one case from Rs. 6 to Rs. 36 a year, at the same time beyond the services of a Chowkeedar at night, which again have been of late dispensed with. The inhabitants did in no instance ever derive a particle of benefit from the operation of the Act, the surplus being always expended for Municipal purposes on the other side of the river.

That the petitioners' villages, it appears, have been united to the City Union. The city of Moorshedabad, however, is pretty nearly five miles distant from the villages on the west bank of the River Bhauggirutty, and the Notification by which this union had been formed, had never come under the observation of your petitioners, who seldom have any opportunity of reading the *Gazette*."

The Council would observe that the establishment of the unions was in this case without knowledge on the part of the inhabitants, and, as would be seen below, without any advantages to the parties who formed the union. In another part, the petitioners said:

"The villages your petitioners inhabit have no roads, nor is there, from the situation of the houses, as also of the river bank, the slightest possibility of any being made: Municipal improvement therefore, however desirable, is entirely out of question in such places"

The British Indian Association also

had referred to some inequalities and difficulties in connection with this subject. They said, referring to Act III of 1864 (even under that law which applied to larger towns and places of some importance this objection had been found in the working of it):

"The area of Municipalities is so largely extended, comprising villages which do not at all possess any of the distinguishing characteristics of a town, and are not, therefore, advanced for Municipal Government; that the people not unnaturally infer that the inclusion of such villages is made solely for the purpose of taxation, and not for that of improvement."

The Hon'ble Mover of the Bill had been kind enough to say, during the discussions in Select Committee, that he would be open to accept any compromise which was reasonable, with a view to do away with the admitted evils of the system. He (Mr. Thompson) had accordingly given some attention to the subject, and it seemed to him that if the Section was to be retained, the only suggestion which he could make was that there should be a provision in the Bill, that a fair proportion of the funds which were raised in any place should be appropriated to that place; but if that was allowed, he thought there would be no necessity of having unions at all, for each place under such circumstances would be able to stand by itself.

MR. DAMPIER said, if the Council was of opinion that the formation of unions should not be permitted, he had no objection to offer to the motion. But if any of the subsequent Sections of the Bill were materially altered, it might be necessary fon him to call attention again to Section 5. Assuming, however, that the other Sections passed as the Bill stood, he had no objection to the present motion.

MR. HOGG said, it had been suggested that the system of unions should not be introduced, and if this was done, each village or each town would have to be formed into a Municipality, and to have a complicated system of Municipal management. He would submit that to say that these small towns should not assist each other, was altogether wrong in principle. It might as well be argued that every small street in Calcutta was to have the tax raised in it expended on that street. It would preclude the possibility of large improvements in any place. He thought the Council might well leave it to the discretion of the local authorities to decide what villages should be brought into unions, those Officers having better means of judging of the propriety of dealing with villages under this Bill. He would therefore leave the formation of unions entirely to the discretion of the Government.

THE ADVOCATE GENERAL said, he rose, not for the purpose of expressing any opinion with regard to the desirability of omitting or retaining this Section, but he desired to have some information as to the point whether, practically, this Section would enable the establishment of unions in such towns or places to which the Municipal system of 1864 would not be applicable. He thought the Bill ought only to be extended to such places as could support the machinery that this Bill contemplated.

At the suggestion of the PRESIDENT, the consideration of the Section was postponed.

Section 6 provided for the definition of the limits of the places to which the Act might be extended, and who should be liable to the assessment of the tax.

MR. DAMPIER said, he thought the consideration of the first clause of the Section might be postponed. He would move the insertion of the following Proviso to the Section:

"Provided also that if any house or building be occupied by two or more separate families, not being tenants of one common landlord, the head of every such separate family shall, for the purposes of this Act, be deemed to be the occupier of a separate house."

It had been suggested to him that in the Mofussil there were numerous houses occupied by different branches of the same family living in different compartments, and he had been in-

formed that in practice each of these compartments had been treated as a separate house. If this Proviso was introduced, the effect would be that the maximum of five Rupees for each house which was imposed by another Section of the Bill, would be removed, and the maximum would become five Rupees for every separate family occupying a portion of a house.

BABOO RAMANATH TAGORE said, supposing one house was occupied by five families, and each family only occupied two rooms in the house, would those five families be obliged to pay five Rupees each?

MR. DAMPIER replied that each person ought to be assessed according to his means and the property to be protected. If he was in a position to pay the maximum, he did not see why he should not be required to pay it.

BABOO PEARY CHAND MITTRA said, if the proposed Proviso was carried, it must lead to the making of enquiries as to the number of families and persons living in each house. As a rule, every native house was occupied by more than one family. All the sons of a Hindu gentleman kept the same house, be their condition whatever it might be, whether they belonged to the middle, upper, or lower class. The law should be made simple, so as to levy a certain rate from each house; but if enquiry had to be made whether a house was occupied by several families, it must necessarily lead to difficulties and vexation, and give rise to extortion on the part of those who might be employed to make the enquiries. Taking all circumstances into consideration, he thought the gain would be the greater by assessing each house. By the system proposed, you might gain more in a pecuniary point of view, but it would be at the expense of the peace and contentment of the people.

MR. HOGG agreed with the hon'ble member who spoke last. He did not think that the amendment could be practically carried out. It was imposing a very difficult duty on the executive, who could never ascertain what persons ought to be assessed without resorting to inquisitorial proceedings. But when the Section for limiting the amount to be levied from any one individual to five Rupees was before the Council, he would propose that the limit be altogether removed. A zemindar who occupied a house with a rental of 500 Rupees, would under the Bill have to pay the same as a man whose means bore no comparison to the zemindar's. Again by another Section cook-rooms, stables, shops, warehouses, orchards, gardens, and tanks would be excluded from the assessment. He (Mr. Hogg) thought that a house with all its appurtenances and everything included in it should be taken into consideration when making the assessment.

THE ADVOCATE GENERAL said, the discussion seemed rather to be sliding to the general question as to whether we should have an assessment or not. He did not think the observations with regard to the position of joint-families arose on this Section. He wished to understand whether the Clause here was intended to apply to cases of sub-occupation by separate persons having separate families.

MR. DAMPIER said, the subject had been pressed on him very strongly by an Officer of great experience, and it seemed a reasonable provision to make.

The motion was then negatived, and the further consideration of the Section was postponed.

Section 7 was agreed to.

Section 8 was agreed to with a verbal amendment.

Section 9 was agreed to.

Section 10 provided that the Police paid under the Act were not to be employed beyond the limits of the Town to which they belonged.

MR. HOGG asked if the Police would not be bound to serve processes out of the limits of the Town.

MR. DAMPIER said, they would certainly not be bound to do so; they

would be entirely paid by the Town, and should not be required to act except in the Town, and for the purposes of the Act.

The consideration of the Section was then postponed.

Section 11 provided for the monthly payment of the Police.

BABOO PEARY CHAND MITTRA said, he would like to be informed whether or not the surplus proceeds of the Cattle Trespass Fund would be available for the partial payment of the Police.

MR. DAMPIER said, if he should attempt to describe what became of the Cattle Trespass Fund, he should have to enter into an explanation of the whole system on which local and imperial roads were provided for. The Cattle Trespass Fund was applied to the construction and improvement of local roads and communications, but in a different sense to the improvement the Council was now considering. The Fund went to the local fund of the *district*, and not to the funds of the Town.

The consideration of the Section was then postponed.

Sections 12 and 13 were agreed to.

Section 14 related to the application of the Town Fund, and provided that no larger sum than Rs. 50 per mensem should be applied in vaccination and the establishment and maintenance of dispensaries and hospitals.

MR. HOGG thought it was difficult to define the amount required for dispensaries and hospitals in the different Towns. He would therefore move the omission of the proviso at the end of the Section, which laid down the limit of Rs. 50.

MR. DAMPIER said, he agreed with the hon'ble member, but had failed to carry his view in Committee. The Section was taken from the Act lately passed for amending the District Municipal Improvement Act. At that time he (Mr. Dampier) had opposed such limit, for the simple reason that one Municipality might have an income of Rs. 10,000 a year, and another of Rs. 1,000; and why we should limit the discretion of the Municipality he could not understand.

KOOMAR HARENDRA KRISHNA said, in the larger Towns Act III of 1864 would be in force. This Bill would only take effect in the smaller Towns. Experience had shown that even in the larger Municipality, the funds might not be properly applied. How then could we expect always to have a proper application of money in the small Towns to which this Bill would apply! The motive of the limit was that the Town Committees might not be able to spend more than was absolutely necessary; and we could not consider that the circumstances of any Town would be such as to make it proper that a larger sum than Rs. 50 a month should be expended in support of hospitals and dispensaries.

MR. DAMPIER said, the extra-suburban unions, under Act XX of 1856, realized from Rs. 70,000 to 80,000 annually, and the limit given in this Section was quite unsuitable to a place where the amount collected was of such magnitude. The object of the Bill was to give the Government power to do everything as circumstances required.

BABOO RAMANATH TAGORE said, he was one of the Members of the Select Committee who supported this Section. His object was that the additional one anna per house, which was imposed by the Bill on the poor ryots and others, was solely intended for the construction and maintenance of roads and tanks, and for conservancy purposes. And as for vaccination and dispensaries, considering the Towns where this Act would be introduceed, he believed they would hardly be appreciated. The people in the Mofussil generally were very averse to English medicines, and many even believed that if they once went to an hospital, they would never be allowed to come out. He did not mean to say that that was the feeling of all the natives in the Mofussil; but he knew that the igno-

rant entertained such fears, however absurd they were.

Another reason for the retention of the proviso was that money raised for roads and conservancy ought not to be laid out for purposes for which zemindars and others were constantly making provision. Some Magistrates might think that the establishment of hospitals and dispensaries was far better than roads, tanks, and conservancy; but they forgot that if you have good roads and tanks, and clean places, there would be no necessity for hospitals. The former would operate as a preventive of sickness, while the latter as a curative only.

Again, in a Municipality there was a tendency to spend more money than was necessary. Take, for instance, the Calcutta Pauper Hospital. When it was in the hands of the Government, the annual expenditure was not more than Rs. 16,000 or 17,000; but the moment it was placed under the Municipality, the expenditure rose to about Rs. 35,000, because what was everybody's money was nobody's money. He therefore thought that if the object of the Bill was for the purpose of providing good roads and good tanks, the Section should be left as it was. He might add that as that Section permitted the expenditure of Rs. 50 per month for dispensaries and hospitals, where an urgent need might arise for the application of the Municipal Funds to such purposes, that object could be fulfilled under the Section as it stood. Rs. 50, in his opinion, would be quite sufficient, considering the places where these hospitals and dispensaries would be established.

The Council then divided on Mr. Hogg's amendment:

Ayes 9.	*Noes* 4.
Mr. Sutherland.	Koomar Satyanund Ghosal.
Mr. Alcock.	Baboo Peary Chand Mittra.
Mr. Knowles.	Baboo Ramanath Tagore.
Mr. Hogg.	Koomar Harendra Krishna.
Mr. Thompson.	
Mr. Trevor.	
Mr. Dampier.	
The Advocate-General	
The President.	

The motion was carried, and the Section as amended agreed to.

Section 15 related to the preparation of the Police Budget.

MR. HOGG rose for the purpose of asking a question as to the estimates.—

THE ADVOCATE-GENERAL rose to order. He thought the proceedings of the Council were drifting into mere conversation. When the question was put by the President, any member who objected ought to be prepared to move a formal amendment.

THE PRESIDENT said, no doubt the proper course was to put formal amendments; but it was open to any hon'ble member to ask questions.

MR. DAMPIER said, he would explain the system of estimates provided for in the Bill. The estimates were to be in two parts. First, the Magistrate was to draw up an estimate for Police, with which the Town Committee had no power to interfere. The second part was for Conservancy, which was prepared by the Magistrate, with the advice of the Members of the Committee, and in that part of the estimate they had a voice, and they had a right to record objections, which by another Section must be submitted to higher authority. The two parts, the Police Budget and the Conservancy Budget, formed the aggregate estimate for the Town.

Section 15 was then agreed to.

Section 16 related to the preparation of an estimate, for all purposes other than Police.

MR. THOMPSON asked if the hon'ble member in charge of the Bill would wish him to move here the amendment as to the duties of Town Committees, of which he had given notice.

THE PRESIDENT said, he perceived that there were two amendments of which the hon'ble member had given notice. The first amendment, for the omission of Section 5, was a specific amendment, which had been put to the Council. The second amendment was a very indefinite one, and should never have been put on the Council Paper. If the hon'ble member had any specific amendment to make, he might do so.

The consideration of this Section, and of Section 17, was then postponed.

Section 18 was passed after a verbal amendment.

Section 19 was agreed to.

Section 20 was passed after a verbal amendment.

Section 21 was agreed to.

Section 22 having been read,—

MR. DAMPIER moved that all the words after the word "year" in the 16th line be omitted, and the following words be substituted for them :—

"It shall also be lawful to declare the date from which the assessment made under the provisions of this Act shall take effect, provided that the amount of tax to be levied in respect to any portion of the year which shall remain unexpired on the date from which the said assessment may take effect, shall not bear a greater proportion to the maximum amount leviable under this Act on account of a whole year, than such unexpired portion of a year shall bear to a whole year."

The motion was carried, and the Section as amended was agreed to.

The further consideration of the Bill was then postponed.

The Council was adjourned to Saturday, the 23rd instant.

Saturday, 23rd May, 1868.

PRESENT :

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Harendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq., and
Koomar Satyanund Ghosal.

POLICE AND CONSERVANCY OF TOWNS.

THE PRESIDENT intimated that the further cosideration of the Report of the Select Committee on the Bill "to amend and consolidate the law for the regulation of Police in Towns under the control of the Lieutenant-Governor of Bengal, and for the Conservancy and Improvement thereof," would be first proceeded with.

MR. DAMPIER moved that the Report of the Select Committee on the above Bill be further considered in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

THE PRESIDENT having declared that Section 42 would be first considered—

MR. THOMPSON moved that Clauses 1, 2, 4, and 5 of this Section be left out. He said that as there was a formidable array of amendments standing in his name, it would be necessary for him to enter into a brief explanation of their purport and object. The Bill as brought in proposed to enact that in some of the places to which the Act extended, there should be Town Committees, whose duties should be of a very large and comprehensive character. In the discussions in Committee upon the subject, he took exception to the proposed arrangements as too cumbersome and unsuited to any places of the kind to which the Bill would be extended; and when overruled in the Select Committee, he had reserved to himself the right of bringing up before the Council the subject-matter of those Sections regarding which he had given notices of amendment. The single object of all these amendments was to provide a simple machinery for giving effect to the measure, and the duties of the Town Committees would then be limited to the making only of the assessments and collections for the objects of the Bill. The Council would observe that whatever discussions took place on the Section now before the Council would suffice for all the other Sections regarding which notice had been given. If the present amendment was accepted, the discussions on it would apply to all the other Sections. If rejected, the other amendments would, with the permission of the Council, be withdrawn.

His objections to the provisions of the Bill which imposed those larger duties and higher powers were founded on the fact that the places to which the Bill would apply were not likely to be of a kind to justify the cumbersome details and procedure provided in the Bill. The Council were aware that we already had a law, passed only a few years ago, and still an experiment, which provided fully for all the aspirations to local self-government which any place in the Lower Provinces could desire. That measure became law after a careful and full consideration; and he believed that it was within the competency of the Government to apply and extend its provisions to whatever places it might think fit; and it appeared accordingly that that law had been extended and applied to a very large number of places, and certainly he believed to all places which in any sense of the word deserved the name of a Town. Every place which, from its position or population, from its connection with railways and rivers, or from its trade, was capable of having a Municipality, enjoyed one under that law, or might have it on representing its need to the local Government. What remained then, he would ask, in the way of towns which made legislation necessary in the form which this Bill took? The hon'ble mover of the Bill had observed that it was intended for places or towns not sufficiently advanced for the introduction of the District Municipal Improvement Act; but as the British India Association had remarked,—

"The provisions contained in this Bill do not materially differ from those of the last-mentioned Act, except in respect of the rate and mode of taxation, and the powers of the Committees. It may therefore not improperly be called a Union Municipality Bill."

He (Mr. Thompson) would request the Council to examine the duties required of Town Committees, and then, taking into consideration the character of the villages (for they were really nothing more) to which it would alone be applicable, to say whether the scheme was not too cumbersome, and whether the machinery was not too complicated. We were to have Town Committees and Ward Committees, Chairmen and Vice-Chairmen. We were to have Sketch Estimates, and Budgets, and Reports, and Returns, and Revisions, which would be good enough if we were legislating for the finances of the empire, but quite inapplicable to the circumstances and requirements of the villages to which this Bill would apply.

Another point was, what would be the amount of funds available, for improvements after paying for the Police. There were no very reliable statistics on this point; but we had had some discussions in Committee; and in the absence of positive information we could only arrive at an approximate estimate. We assumed that by taking 1,000 houses as the highest number, and supposing that the maximum assessment, which it was optional to adopt or not, was applied in all the places to which the Act would extend, we should realise an amount of about Rs. 60 a month, and this for purposes of conservancy, roads, vaccination, dispensaries, and hospitals. If that was in any way a fair calculation, he asked whether the objects which would be attained at all justified the means proposed to secure them, and whether it would not be wiser and more practical to legislate exclusive for purposes of conservancy, and leave to the executive authorities alone the distribution of those small funds which would be available for Municipal purposes after the payment of the Police. He believed we would thereby get better roads and better conservancy.

He would also plead in behalf of the Magistrates. It was no exaggeration to say that they were now over-burdened with labor. They had to look to the Judge of the District, and the Commissioner of the Division; they were also subordinate to the Board of Revenue and the High Court. They had to supervise the work of the Subdivisions, and had besides their own Sudder duties. They had to carry out the provisions of Act III of 1864, and manage and control the Committees

appointed under that Act. And we proposed now to impose upon them the most difficult of all duties, namely, the bringing into harmony the views and wishes of people living at distances, who would be, he believed, a most impracticable and unmanageable body. He (Mr. Thompson) had therefore not hesitated to speak of this Bill as the most remarkable recent instance of over-legislation. Since the year 1863 there had been about six or seven Acts passed in connection with Municipalities. Some referring to Calcutta were no doubt proper; others relating to districts, where also the plan was feasible; but they were altogether impracticable and unsuitable in the petty places to which it was proposed to extend this measure. It would be much wiser, in his opinion, to legislate in the sense that a broad line should be drawn between places fit for local self-government and those which were not. That places fit for Municipalities should be brought under the operation of Act III of 1864, and all places not so fit should be left to the direct executive supervision of the Magistrates of Districts controlled by their official superiors.

THE ADVOCATE GENERAL said, he had a very few words to say on the proposed amendment, which, as had been truly said by the hon'ble member, seemed to involve in it the principle of all the other amendments of which he had given notice, so that if this amendment was rejected, it would probably be unnecessary for any of the other amendments to be considered. He (the Advocate General) confessed that he went thus far with the hon'ble member that he thought that the duties of the proposed Town Committees, as defined in this Section, as well as the duty of the Magistrate in consultation with the proposed Town Committees, as defined in the 16th Section, were not at present expressed or limited in such a way as would render it, to his (the Advocate General's) mind at any rate, sufficiently plain as to what were to be the powers of the Committee, and what, in the absence of any investment of the Committee by the Executive Government, were to be the extent of the powers of the Magistrate independent of the Committee. That perhaps was rather more a matter of detail, and of the altering of the wording of the Section, than matter involving the general principle, which was all that the hon'ble member had addressed himself to. With regard to that, the position in which he (the Advocate General) felt himself was this. He understood the general object of the amendments notice of which had been placed on the Paper, to be that the duties of Committees should be confined exclusively to those of assessment; that they should have nothing to do with the preparation of estimates; nothing to do with arrangements and establishments, or with the determination of the works which were to be undertaken, or the measures to be adopted for the conservancy or improvement of the Town; nothing to do with the application of any part of the Local Fund. And he must say that if he thought it right to act only on his own view in a matter in which his information was so very imperfect, he should have thought that no middle line could be drawn between towns or villages which were apt for the introduction of the District Municipal Improvement Act in its integrity, and those which were practically unsuited for the adoption of any Municipal system whatever. But he understood that it was considered by those far better qualified than he could be to form an opinion on the subject,—which after all was a subject any conclusion on which must be based on facts and practical experience,—that there were at present (and there might be more instances hereafter) places which, although the circumstances might not be such as to warrant the application in them of Act III of 1864 in its entirety, might yet warrant, and might yet require, the application of a middle system (if he might use the expression) in the sense of measures taken for the conservancy and improvement of such places, and which should not be left to the absolute discretion of the Executive Authorities, but that those who might be

supposed to represent in such places the most advanced intelligence of the community should at any rate have some voice in the adoption of the measures which it was proposed to carry out. That being so, he felt it his duty to oppose the amendment; reserving any objection he might have, and which he might think it advisable to advance in point of clearness, and otherwise with regard to the form of this Section 42 and the other cognate Sections, and treating the proposed amendment, as he understood the hon'ble member wished it to be understood, as aimed against the general principle on which the Bill was framed, so far as Town Committees were concerned. He should oppose the amendment, because, under the circumstances he had stated, it was proposed that the Council should afford the Executive Government an opportunity of trying this medium measure, and not leaving them to choose between no Municipal system at all, and the fully developed system of 1864.

BABOO PEARY CHAND MITTRA said, he would also oppose the motion. One great object of the hon'ble mover of the Bill was, that if the Bill were passed, the people would get accustomed to aid in local self-government, and would be taught to take a part in the administration of their Municipal affairs But if the present amendment was carried, that object would no doubt be frustrated. The only question was whether there were materials enough in most of the places in which the Bill would be introduced, to warrant the Council in giving such powers to the Town Committee. From what he (Baboo Peary Chand Mittra) knew of the people in the Mofussil, he thought there were. We knew that the working of the Punchayet was satisfactory in every place in which it had been tried, even in matters concerning their own affairs. If any dispute arose, the people referred it to a Punchayet, and the dispute was speedily settled. The people from time immemorial had been accustomed and had been taught to refer their disputes for disposal to Punchayets, and he had not the least hesitation in saying that the Punchayets were quite capable of assisting the Magistrate in the matters referred to in this Section. On those grounds, and with a view to raise the status of the people generally, giving them an advanced position, and educating them in self-government, he would decidedly oppose the amendment.

MR. DAMPIER said, the amendment about to be put at the motion of the hon'ble member opposite (Mr. Thompson) must stand on one of two hypotheses. Either it was that the Government was not bound to allow, as far as might be practicable, and indeed to do what it could to induce, rate-payers in places into which local Municipal taxation was introduced, to take part and interest in the management of their own local affairs; or else the position must be that there was not, throughout the whole of the Lower Provinces of Bengal, any town of which the most respectable rate-payers were fit to take *any* part or interest whatever in their own local government, or even fit to give advice to a Magistrate who should have the despotic power of over-ruling all their suggestions, unless they were fit to be entrusted with the *entire* management of the affairs of their town under the District Municipal Improvement Act. It seemed to him (Mr. Dampier) that either position was untenable altogether. The hon'ble gentleman who moved the amendment had altogether passed over the consideration which the last speaker had brought to notice, that no doubt the Government was bound, as far as it could, to lead the people on towards local self-government. All that the Government asked in the Bill was to have power to do so gradually, and as it might think to be proper. In its simplest form, that was to say, if the Government did not issue any special order under Section 46, if it only issued the simple order that the Act should be extended to such and such a town, the procedure would be simple enough to satisfy the hon'ble member opposite (Mr. Thompson). The Magistrate, with

the sanction of the Commissioner, was to nominate the members of the Town Committee, as he now did under the Chowkeydaree Act, and then he would simply consult the members of the Town Committee, over-ruling them in every point on which it seemed good to his judgment to do so. That was the simplest form of the Bill, and the one which would always prevail if no special orders were passed.

It had been said that this Bill would only apply to villages, and the hon'ble member had spoken of 1,000 houses as the maximum. The Suburban Unions of Calcutta, however, which paid last year between Rs. 70,000 and 80,000—that tract lying just outside the twenty-seven square miles in which the District Municipal Act was in force—must represent about 40,000 or 50,000 houses. Again, in the Town of Moorshedabad, the old Chowkeydaree Act was still in force: it was an enormous Town. It appeared that the question of introducing the District Municipal Act into that Town had once been fully discussed, and the Government came to the conclusion that it was not desirable to do so. Now, if the Government should still hold that Act III of 1864 should not be introduced in Moorshedabad, surely it was time that the Magistrate should have some assistance from the many respectable inhabitants in that Town. He (Mr. Dampier) named Mooshedabad as the extreme case in which the Government might make use of the people in the management of their own affairs.

It seemed to him that the position which the hon'ble member had taken up was a peculiar one. The Local Government was pressed to extend municipal taxation and local improvements of every kind, and the Government was willing to avail itself of the assistance and advice which could be given in certain places by the respectable rate-payers of Towns in carrying out those proposed local arrangements. He (Mr. Dampier) thought he was justified in saying that the hon'ble gentlemen on his left (the native members) represented the great mass of the rate-payers, and they said they were ready and even anxious to assist the authorities to the utmost of their power.

The active and the passive parties being agreed, the hon'ble member who had moved the amendment stepped in between them and said:—"No; the one party shall not avail itself of the proffered assistance, and the other shall not give it." He (Mr. Dampier) did think that that was not a matter in which the hon'ble. member was bound to move an amendment.

If the hon'ble member could think that the proposed measure threatened the least injury to any one—that it tended to encroach in the slightest degree on any right, or that the Government were attempting to take to itself greater powers than were necessary—he (Mr. Dampier) could well understand the opposition of the hon'ble member; but on the present question there were two parties concerned, and they being agreed, it appeared to him that the hon'ble member might leave them to settle the matter between themselves.

And the differences of opinion on different points involved in a matter of this sort were so wide and numerous, that a measure which would meet the views of every individual member of Council was quite out of the question. He need only point to what had fallen from the hon'ble mover of the amendment, who said that he believed that the Magistrates would find the Town Committees to be the most impracticable and unmanageable of bodies, and that they would prove a thorn in the side of the Magistrate. The other day, another hon'ble member had said that the members of the Local Committees would be so entirely under the influence of the Magistrate, that that officer would only have to look fiercely at them, and they would immediately do all that he wished. Again an hon'ble Member on his left (Baboo Peary Chand Mittra) said that the working of the Punchayets had hitherto proved most satisfactory, and he (Mr. Dampier) was sure that at least one other hon'ble member would give

a directly contrary opinion. It was impossible in a matter of this kind to conform to every man's views in every point of detail.

The Government had after proper consideration come to the conclusion that it would be able to make some effectual use of the powers conferred by the Bill, and he hoped that the Council would not withhold those powers, and that hon'ble members would not follow the hon'ble gentleman into the cave into which he would lead them.

MR. THOMPSON said, he wished to make a few remarks in reply. If we were to discuss this question, as an educational one, we must proceed on other grounds altogether. He was quite ready to admit that the Government was right in availing itself of all the assistance which the inhabitants of places could render for Municipal purposes. But the condition should be that the places should be fit to be Municipalities, and could afford materials of a character to justify the imposition upon them of duties such as those now under discussion. His main objection here was that the places to which the Bill would extend were not fit for rendering such assistance as the hon'ble member desired. Something had been said in the course of this debate of educating the people by means of this Bill, and leading them on to habits of self-reliance and self-government. This was the kind of talk which was in vogue at present, and probably the same argument would be applied if we were extending the system of this Bill to every place in Bengal. The position, however, which he took was that, admitting the usefulness and necessity of Municipal self-government in places where it was possible, both in the interests of the Government and of the people, the principle might be carried too far. Take the case of the Jury system as an illustration. That system had been very properly introduced in many places throughout the Bengal Presidency. It prevailed in Calcutta. It obtained in certain large cities such as Dacca, Patna, and Moorshedabad. It had also been introduced in certain Districts, which might be called Metropolitan Districts, where, from the restrictions of public opinion, and the advancement and education of the people, it had a very beneficial effect. But if any one were to say that because the principle was a good one, you ought to extend it to remote places such as Sylhet and Cachar, he, (Mr. Thompson), though he had experienced and recognised all the advantages of the Jury system in this country, should as strenuously oppose it as he did this Bill, because, though the principle was good, the places in which it was proposed to adopt it were not fit. According to his own experience in the Kishnaghur District, every place that was really a town had already been brought under Act III of 1864. He did not think there were any other towns to which the principle of Municipal self-government could be satisfactorily applied, and he certainly did not think that by calling the Punchayets Town Committees, giving them the assistance of Ward Committees, making them Corporations, and introducing names and titles of English character, you were promoting one bit the education of the people which you talked about.

The hon'ble mover of the Bill had also alluded to the fact that the hon'ble member on his left, (Baboo Peary Chand Mittra), as speaking for the native community, had given his assent to the Bill. He (Mr. Thompson) could only say that those with whom he had conversed on the subject of the Bill had spok . of it as too detailed and cumbrous for the object in view, and that there would be a difficulty in carrying it out. There was some support for this in the opinion of the British Indian Association, which he thought was entitled to greater weight than the opinion of any individual member. They said:—

"The extension of the Municipal system to smaller towns is evidently contemplated from a supposition that the working of the District Municipal Improvement Act has proved beneficial to this country. Nothing could, the Committee respectfully submit, be a greater mistake than such a notion. They have care-

fully watched the operation of the law; and from their intimate knowledge of the feelings of their countrymen, they are in a position to state that it has, with rare exceptions, given the greatest dissatisfaction to those who have been brought under it."

If we might appeal to authority, he would prefer taking the opinion of a body like the British Indian Association.

It was also to be observed that the hon'ble mover of the Bill had referred to certain places, called the Suburban Unions, where large funds were raised for Municipal Government, and he had also stated that the city of Moorshedabad was not fit for the introduction of the District Municipal Act, and there this Bill would apply. He (Mr. Thumpson) did not know under what circumstance Act III of 1864 was not enforced in the Suburban Unions and the city of Moorshedabad; but if they were, as he supposed, large and wealthy places, and contained, as we knew they did, influential and intellegent inhabitants, he did not see why the larger Act should not be extended to them without the necessity of fresh legislation in the form of this measure.

The motion to omit Clauses 1, 2, 4, and 5 was negatived.

Section 42 was then passed with two verbal amendments.

Sections 23, 24, and 25 were also passed with verbal amendments.

Section 26 was agreed to.

Section 27 having been read—

MR. THOMPSON, with the leave of the President, withdrew all the amendments of which he had given notice.

Sections 27 and 28 were then agreed to.

Section 29 provided that there should be at least one-third of the members of the Committee present at a meeting.

THE ADVOCATE GENERAL moved an amendment to the effect that there should be at least three members present at each meeting. The Act, he said, contemplated that there might be a Committee composed of five members, and one-third of five would be one. There might, again, be two members present, and then each would vote for himself to be appointed Chairman. He did not therefore think that the quorum should consist of less than three, and he would move accordingly.

The motion was carried, and the Section as amended passed.

Section 30 was agreed to.

Section 31 provided that every Town Committee might appoint some one of their number to be Secretary.

KOOMAR HARENDRA KRISHNA enquired if there was any objection to the Committee appointing a person not one of their number to be Secretary.

MR. DAMPIER having stated that he saw no objection—

KOOMAR HARENDRA KRISHNA moved an amendment to that effect, which was carried, and the Section as amended agreed to.

Section 32, fixing the duration of office of a member of the Committee, was omitted, as being unnecessary, the serving on Committees being no longer compulsory.

Section 33 was agreed to, with the addition of a Clause declaring that a member of a Committee might be reappointed at any time.

Section 34 was passed with a verbal amendment.

Section 35 was agreed to.

Section 36 was passed with verbal amendments.

Section 37 was agreed to.

Sections 38 and 39 were struck out, for the same reason as the omission of Section 32.

Section 40 provided for the removal of a member of a Committee on the application of the tax-payers; and Section 41 for his removal if guilty of any offence which, according to the provisions of the Penal Code, it would be an offence to compound.

THE ADVOCATE GENERAL suggested that it would be better, in preference to restricting the power of removal as proposed, to give a general power to Government. There might be causes (besides mere neglect of duties or want of capacity), such as undue

interference with the Magistrate, or obstructing his colleagues, which might make it very desirable and proper to remove a member of a Committee.

BABOO PEARY CHAND MITTRA said, by the District Municipal Improvement Act, the Government had the absolute power of removing a Commissioner. If the power of asking for the removal of a member of the Committee was conferred on the inhabitants, they might perhaps be induced to petition against a person who, from his advanced position, or other cause, had become obnoxious to them. He thought it would answer every purpose if the power of removal was left in the hands of the Government.

THE ADVOCATE GENERAL said, he did not see any inconsistency between Sections 40 and 41. It might be said that, under the general power proposed to be given, the right of removal on the representation of the inhabitants would be included; but still he thought it was not undesirable to give the rate-payers an opportunity of expressing their opinion of the conduct of the members of the Committee.

KOOMAR HARENDRA KRISHNA said, that supposing the Sections were amended as proposed, if a member of a Town Committee did not pull well with his colleagues, they would be able to report him to Government, and thus procure his removal. He thought that that should not be allowed, and would vote for the Sections as they stood.

MR. DAMPIER could only say that some such considerations as those advanced had induced him to amend Section 41 as it stood. If the Council was disposed to leave the discretion absolutely to the Government, it was not for him to oppose it.

Section 40 was then agreed to, and Section 41 was amended so as to leave the removal of members of the Committee entirely to the discretion of Government.

Sections 43 to 46 were agreed to.

Sections 47 and 48 were passed with verbal amendments.

Section 49 provided the nature of the tax to be levied.

MR. HOGG said, he rose to draw the attention of the Council to the inequality of the tax, if the last three lines of the Section were allowed to stand. In distributing the tax, the Punchayet or Town Committee would not improbably be inclined to impose too high a tax on the poorer classes, and to exempt their own class, and the last three lines would favor such unequal distribution. Besides, a zemindar who was in occupation of the largest house, would not be sufficiently taxed if he was only required to pay five Rupees per month, and he would probably derive more advantage than the poorer classes from the improvements that might result from increased taxation. He therefore moved that the last three lines of the Section be omitted.

BABOO PEARY CHAND MITTRA said, he objected to the amendment, because he thought there ought to be a limit to the amount of taxation. If there was no limit laid down by the law, it might produce great uncertainty as to the amount that ought to be collected from each individual. If five Rupees was not a sufficiently high limit, he would prefer its being raised to ten Rupees, rather than that there should be no limit; and he begged to move an amendment to that effect.

MR. DAMPIER said he would support the amendment.

BABOO RAMANATH TAGORE objected to the amendment, because he thought the tax was not to be imposed on the circumstances of the people, but on their houses. Besides, it ought to be remembered that houses in the Mofussil were not so valuable as in Calcutta.

KOOMAR HARENDRA KRISHNA said, he would support the objections to the amendment which were taken by the last speaker. In Select Committee the limit of five Rupees was inserted at his (Koomar Harendra Krishna's) instance. In the original Bill, and in the existing law, the limit was the pay of a Chowkeydar of the

lowest grade; but as that varied very much in different districts, he thought the limit of five Rupees was the most fair and equitable.

The Council then divided on the last amendment:—

Ayes 7.	*Noes* 6.
Mr. Sutherland.	Koomar Satyanund Ghosal.
Baboo Peary Chand Mittra.	Mr Alcock.
Mr. Knowles.	Baboo Ramanath Tagore.
Mr. Thompson.	Koomar Harendra Krishna.
Mr. Dampier.	Mr. Hogg.
The Advocate-General	Mr. Trevor.
The President.	

The motion was therefore carried.

MR. HOGG said, he had another amendment to propose. The Bill, as it had passed through Committee, had been so amended as would, in many places, make it take the place of Act III of 1864. If the Bill was to take effect only in small places, he would submit that the average rate of Rupees 2-4 per annum for each house would be sufficient; but if the Act was to be extended to large towns like Moorshedabad, Rupees 2-4 per house would not at all represent the amount of local taxation which such places ought to produce. He would therefore move that Rupees 4 be substituted for Rupees 2-4.

BABOO RAMANATH TAGORE objected to the amendment. If he recollected rightly, when the hon'ble mover introduced the Bill, he explicitly stated that this Bill would operate in villages which were comparatively poor, and that therefore, in addition to the two annas per house that was now levied for Chowkeydars, a tax of one anna for conservancy would be sufficient. On that statement the Council agreed to the principle of the Bill. But if that principle was to be over-ridden, and an additional tax imposed, it would do great injustice to the poor ryots in whose villages the Bill would come into operation. We should not only look to the proceeds of the tax, but to the circumstances of the people on whom the tax would be imposed. He (Baboo Ramanath Tagore) knew that the poor ryots would pay the additional one anna with great difficulty, and any further tax they would consider a great evil and misfortune. He therefore thought that the limit of of Rs. 2-4 provided in the Bill should be retained.

BABOO PEARY CHAND MITTRA said, he was of opinion that there should be no addition to this tax. Ten rupes per month had been fixed as the maximum assessment on rich men having extensive property; but the limit now under consideration was as high as the poor classes could afford.

MR. DAMPIER said, it did not seem to him right at this stage of the Bill, having started by saying that the Bill was required to raise a little more money to introduce local improvements, to raise the average. We said that as it had not been possible to provide proper measures for conservancy with the average of two annas per house, we proposed to raise it to three annas. He did not therefore think that after the Bill had gone through this stage, we ought now to agree to raise that average.

The motion was then negatived, and the further consideration of the Section postponed.

Section 50 was passed with a verbal amendment.

Sections 51 to 55 were agreed to.

Section 56 provided for the examination by the Town Committee of assessments made by Ward Committees.

MR. DAMPIER explained that the object of this Section was to give to the Town Committee a final power as to individual assessments, where the assessments were made by the Ward Committees. But where there was no Ward Committee, and the Town Committee itself assessed, under Section 57 the duty of revising and finally settling appeals would lie with the Magistrate or Magistrate of the District, as the case might be. The principle was that where a Ward Committee assessed, the Town Committee's decision would be final as to particular

assessments; but where the Town Committee made the assessment, appeals would lie to the Magistrate.

The Section was then agreed to with a verbal amendment.

Sections 57 and 58 were also passed with verbal amendments.

The further consideration of the Bill was then postponed.

POSSESSION OF CHURS AND ISLANDS.

MR. THOMPSON moved that the Report of the Select Committee on the Bill "to amend the provisions of Act IX of 1847 (An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa)," be further considered in order to the settlement of the clauses of the Bill.

The motion was put and agreed to.

KOOMAR SATYANUND GHOSAL, with the leave of the President, withdrew the amendment of which he had given notice.

MR. THOMPSON said, the principle laid down in the first four Sections of the Bill had been adopted by the Council. In the 5th Section the Select Committee had made a provision that when an island had become attached to the main land, the Collector was to make roads for giving access to the river. That Section had, however, been objected to on the probable contingency of the Government disposing of the land, in which case the requisition to make paths and public ways would not be proper, inasmuch as the Government would have no further connection with the island. With that view, he (Mr. Thompson) had prepared another Section; but as the learned Advocate General proposed to make a further amendment upon the Section, he would leave him first to explain it to the Council.

THE ADVOCATE GENERAL said, the Section as proposed differed from the Section which stood in the Bill, in that the construction of roads, &c., was limited to the case that when an island became attached to the mainland, the same should be in the immediate or khas possession of the Government; and there was also a provision that the roads should be made at the expense and on the application of the proprietor of the adjoining tenure. As it was a delicate matter that a person should from accidental circumstances have the means of shutting out others from access to the river, he thought it desirable that the object of the Section should be considerably extended. The case might frequently occur, in the interval between the island being taken possession of and its becoming attached to the mainland, of a person acquiring a temporary interest under the Government; and it would not be fair to the person in whom that interest had been created, that the Collector on behalf of Government should, against his will, take up such portion of the land as had been granted to him temporarily, but that in such case the proper course would be that the Collector should proceed as in Act VI of 1857, and take the land as for a public purpose. He (the Advocate General) presumed it might be said that any path or road leading to the river or sea might fairly be described as land required for public purposes. He would therefore move the substitution of the following Sections for the one proposed:—

(a). "Whenever an island, possession of which shall have been taken by Government under Section III of this Act, shall become attached to the mainland, any person having an estate or interest in any part of the riparian mainland to which such island may become attached, may apply to the Collector to take measures for the construction of paths and roads on the island.

(b.) "Thereupon the Collector may require the applicant to make such deposit of money as to the Collector shall seem sufficient; and on such deposit being made, the Collector shall proceed to lay out and construct such paths and roads in and through the island as he may deem necessary for securing access to the river or sea from the land to which the island may have become attached.

(c). "If it shall be necessary for the purpose of constructing any such path or road to take up land in the island under the provisions of any Act for the time being in force for the acquisition of land for public purposes, any compensation, damages, and costs which the Government may have to pay in respect

of the taking up of such land, shall be paid and made good to the Government by the applicant.

(d.) "In every case the applicant shall be liable to pay and make good to the Government the costs of laying out and constructing such paths and roads as aforesaid, and any moneys due from the applicant under the provisions of this and the preceding Section may be deducted and retained by the Collector out of the deposit so made by the applicant as aforesaid."

THE PRESIDENT declared, that as the amendment proposed a considerable alteration, it would be proper to postpone its consideration till the next meeting of the Council.

The further consideration of the Bill was then postponed.

LIMITATION OF REVENUE APPEALS.

MR. TREVOR moved that the Report of the Select Committee on the Bill "to amend the law respecting appeals in cases under Regulation VII of 1822" be taken into consideration in order to the settlement of the Clauses of the Bill, and that the Clauses be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

Section 1 was passed as it stood.

MR. TREVOR said, he wished to draw the attention of the Council to an omission in the Report of the Proceedings of the Council of the 9th May. He was there made to say that the proposed Bill would merely shorten the period for appealing from the Commissioner to the Board of Revenue, and from the Collector to the Commissioner, from three months to one month. It was a mistake of his in saying that the Bill would shorten the period for appealing from the Commissioner to the Board of Revenue. It merely shortened the period of appeal from the Collector to the Commissioner. The period of appeal from the Commissioner to the Board was one month already, and would not be interfered with.

He thought it would be as well, with reference to appeals from the Collector to the Commissioner, that a certain time should be fixed for the commencement of the Act. He should therefore move that the following Section be added to the Bill:

"This Act shall commence and take effect from the 1st of September, 1868."

The motion was agreed to.

The preamble and title were passed as they stood.

The Council was adjourned to Saturday, the 30th instant.

Saturday, 30th May, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
Koomar Harendra Krishna Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq., and
Koomar Satyanund Ghosal.

LIMITATION OF REVENUE APPEALS.

MR. TREVOR moved that the Bill "to amend the law relating to appeals in cases under Regulation VII of 1822" be passed.

The motion was agreed to, and the Bill passed.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER moved that the Report of the Select Committee on the Bill "to amend and consolidate the law for the regulation of Police in Towns under the control of the Lieutenant-Governor of Bengal, and for the Conservancy and Improvement thereof," be further considered, in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

Section 59 provided that the assessment should stand good for one whole year.

After a verbal amendment—

KOOMAR HARENDRA KRISHNA moved the substitution of the words "three years" for "one whole year." His reason for doing so was that in the Mofussil the owner and occupier of a house was in general the same person. In Calcutta and in places under the District Municipal Improvement Act, the assessment was for three years, and he thought it would be advantageous to the people if the assessments under the present Bill were also to stand good for three years. He did not think it would much benefit the finances of the Town Committee if there was an annual assessment, for generally, no doubt, the assessments would stand good for more than one year. But the amendment which he proposed would, he thought, remove a great deal of anxiety from the minds of the people, for they would then know that when an assessment was once made, it would hold good for three years.

BABOO PEARY CHAND MITTRA said, he would support the amendment. Those who had been in the Mofussil must have observed that there was hardly any change for years in property; the same dull, monotonous aspect was presented almost everywhere. One object gained by the amendment would be that the people would not be kept *in terrorem;* they would know that the assessment would stand good for three years. It was, moreover, desirable to accustom the people gradually to Municipal improvement; they should be allowed to get attached to the institution, and great care should be taken not to make them dissatisfied in any way.

THE ADVOCATE-GENERAL said, the hon'ble mover of the amendment had acquainted him with his intention to bring forward this amendment, and he, the Advocate-General, had at first sight expressed his approval of it; but on further consideration he thought that, as the Section now stood, the amendment was quite unnecessary. Practically, the same assessment might go on for an indefinite period of years. Under the 54th Section of the Bill, the Magistrate might require that, instead of a new assessment, there should merely be a revision or amendment; and again he might direct the simple adoption of the assessment for the time being in force, and by the provision in Section 59 that every assessment should be valid for one year, coupled with the provision that no new assessment was to be made unless made and published before the expiration of the first three months of the year, more was gained than would be gained by the proposed amendment.

MR. DAMPIER said, under the Bill as it stood, the assessment would be adopted from year to year; and, practically, unless there was some good reason for doing so, no new assessment would be made. But that, he believed, would fail to secure the object of the amendment. The hon'ble member wished it to be guaranteed that the assessment once made should not be interfered with for three years. The practical difficulty was this—that the Budget Estimate might be more or less for one year than for the last, and that would make it necessary to revise the assessment. He (Mr. Dampier) thought that with Section 55 as now printed, sufficient protection and security were given.

KOOMAR HARENDRA KRISHNA said, under the 55th Section the revision of the assessment was optional. If the Magistrates chose, they might direct it to be revised every year. In one case the present provision might be beneficial to the people; but if the assessment was to be revised and raised yearly, it could not but be harassing to the people.

The Council then divided :—

Ayes 8.	*Noes* 4.
Koomar Satyanund Ghosal.	Mr. Thompson.
Mr. Sutherland.	Mr. Trevor
Mr. Alcock.	Mr. Dampier
Baboo Peary Chand Mittra.	The Advocate-General.
Mr. Knowles.	
Baboo Ramanath Tagore.	
Koomar Harendra Krishna.	
The President.	

The motion was therefore carried, and the Section as amended agreed to.

On the motion of MR. DAMPIER, Section 55 was transposed so as to stand after Section 59.

The consideration of Sections 60 to 66 was postponed, as they were affected by the amendment made in Section 59.

Sections 67 to 69 were agreed to.

Section 70 was passed after a verbal amendment.

Sections 71 and 72 were agreed to.

Section 73 was passed after verbal amendments.

Section 74 was agreed to.

Section 75 was passed after verbal amendments.

Sections 76 to 82 were agreed to.

Section 83 was passed after a verbal amendment.

MR. DAMPIER said, under the Section just passed, Government was empowered to extend to any place any of the provisions of Schedule G, which contained rules for conservancy, with penalties attached. In the 15th Section of the Schedule there was a provision for the levy of all sums recoverable under any other provision of the Schedule; for instance, where the Magistrate executed any work which could be done at the expense of the owner, Section 15 provided that the expense so incurred might be recovered as a fine. He proposed to transfer that Section, with a slight modification, to the portion of the Bill which the Council was now considering, as it was a provision which ought to be in the body of the Bill, rather than in the Schedule. The Section which he proposed to insert here would stand as follows:—

'It shall be lawful for the Magistrate whenever any sum may be recoverable from any person under any of the provisions in the said Schedule G. contained, for the expenses of any work performed by such Magistrate, to make out a bill of the amount of such expenses, and to cause notice of the particulars of such bill to be served upon the person liable to pay the same. If such bill shall not be paid within five days after the service of such notice, the amount thereof may be recovered from the person upon whom the bill shall have been so served, as if such amount were an arrear of assessment due under the provisions of this Act.''

The motion was agreed to.

Sections 84 to 90 were agreed to.

Section 91 was passed with a verbal amendment.

The consideration of Section 92 was postponed.

Schedules A to F were agreed to.

Schedule G was passed with the omission of Section 15, which had already been transferred to the body of the Bill.

Schedule H was agreed to.

The further consideration of the Bill was postponed.

POSSESSION OF CHURS AND ISLANDS.

MR. THOMPSON moved that the Report of the Select Committee on the Bill "to amend the provisions of Act IX of 1847 (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa)" be further considered in order to the settlement of the Clauses of the Bill. The first four Sections, he said, had been passed by the Council. The discussion remained on the 5th Section as regarded the duties of the Collector in laying out roads and paths. The principle had been considered good that if a person should lose his river frontage, he should be entitled to some consideration as regards roads and paths to be laid out, so that he might regain access to the river. Another principle which he (Mr. Thompson) wished to see determined was that the duty of laying out these roads and paths should only be required of the Collector in cases where the Government was directly in possession of the land, or was in possession through some sub-tenant holding under temporary settlement. Where the Government had permanently disposed of its interests, it could not be right to impose upon it any such duty.

THE ADVOCATE GENERAL said, when this Section was last under consideration, it would be in the recollection of the Council that he proposed to move four Clauses in substitution of the one Clause which the hon'ble mover of the Bill proposed to introduce by

way of amendment. Those Clauses had since been in the hands of hon'ble members. In framing them, he (the Advocate General) certainly proceeded on the principle that the right of the riparian proprietor to apply to the Collector for the purpose of having fresh access given to him to the river should not be limited to such period as the island or chur should continue in the possession of the Government as Government property. But it had since been stated to him, by an authority of much more knowledge than he could have on the subject, that, practically, there could be a necessity of giving this power to apply to the Collector for the construction of paths and roads, only during the time the island should remain in the immediate possession of Government. It had been found that, as regarded temporary settlements, the Government could always protect the interests of the adjoining proprietor by inserting a provision respecting the construction of such paths and means of access as might be necessary in consequence of the island becoming ultimately attached to the mainland. And when, after taking possession, the Government absolutely disposed of the island, he understood that hitherto it had been the practice in all such cases to leave the proprietor or proprietors of the riparian mainland, in the event of the island becoming attached, to make such settlement as they best could, and on such terms as they could, with the proprietor or proprietors to whom the Government had disposed of their interest in the island, and that no complaints had been made or difficulties arisen in consequence of that practice. And therefore, recurring to the limitation which the hon'ble mover of the Bill had inserted in the Section which he proposed, he (the Advocate General) should move, as his first amendment in his motion, that what now stood in the printed paper as Clause (*a*) should be introduced with a slight alteration, which would make the Section run thus:—

"Whenever an island, possession of which shall have been taken by Government under Section III of this Act, shall become attached to the mainland, any person having an estate or interest in any part of the riparian mainland to which such island may become attached while it is in the possession of the Government, may apply to the Collector to take measures for the construction of paths and roads on the island."

The motion was agreed to.

THE ADVOCATE GENERAL said, he then proposed, as he was informed that it was necessary for the protection of the Government that security should be given for the necessary expenditure of constructing the roads and paths applied for, to follow up the Section just carried by the following:—

"Thereupon the Collector may require the applicant to make such deposit of money as to the Collector shall seem sufficient, and on such deposit being made, the Collector shall proceed to lay out and construct such paths and roads in and through the island as he may deem necessary for securing access to the river or sea from the land to which the island may have become attached."

BABOO RAMANATH TAGORE said, if the amendment became law, he feared that no zemindar would ever apply for the construction of a road when he knew that he should have to pay a certain sum of money for its construction, and the consequence would be that the poor villagers would suffer by it, for they would be deprived of their ancient right to the river frontage, and the manifold advantages they derived from it. Was it reasonable or equitable that the poor villagers should be deprived of the access they had to the river from time immemorial, because the zemindar did not think proper to apply for a road?

Besides, he thought it was a false economy on the part of the Government to ask the zemindar to pay for the construction of roads, because it was certain that roads and canals were the chief means of promoting commerce and trade. He therefore thought it was the duty of the Government to encourage the construction of roads and canals, and, whether the zemindar applied or not, it was the duty of the Government to incur the expense.

Under those circumstances, he was of opinion that this Clause, which required a deposit to be made by the zemindar, should not be inserted in the Bill.

BABOO PEARY CHAND MITTRA said, the amendment before the Council might read very well on paper, but he very much feared that, practically, it would not be found a good working provision; and for this reason, that the opening of roads was left to the application of the zemindar or riparian proprietor. The question was—would every zemindar, situated as a riparian proprietor, apply to the Collector for the construction of roads? It was possible that there might be large-minded zemindars who, for the good of their tenantry, might think of constructing roads at their own expense; but he doubted much whether, generally, any application of the kind would be made. He had that morning been told that no application of the kind had ever been made to the Board of Revenue, and therefore, if the construction of a path was made contingent on the application of the zemindar, the application would never be made, and the people would in consequence suffer. It was therefore necessary that due provision should be made, by which facilities should be given for the construction of paths for the promotion of intercommunication and commerce, and the accommodation of the people inhabiting the adjacent places.

MR. KNOWLES said, he certainly agreed with the last two speakers. He was certain that the last three Clauses of the amendment before the Council would make the present Section inoperative. In many cases not only would the applicant be benefited by the roads that would be constructed, but the public generally. It would therefore be hard to call on the applicant, not only to pay all the expenses, but to lodge them beforehand. He (Mr. Knowles) thought that, instead of the last three Clauses of the amendment, a short Clause should be introduced, providing that the costs should be divided between the applicant and the occupier of the new island, at the discretion of the Collector.

MR. THOMPSON said, if it was the intention of the learned Advocate General to press for the adoption of the third Section of the amendment of which he had given notice, he (Mr. Thompson) would agree in the remarks of the last speaker. He did not think, under the circumstances, that any one would come forward and deposit money. But he believed it was intended to withdraw the third Section on the paper, which referred to the payment of compensation for taking up the land for the road. If the present motion was carried, the application would have to be made while the island was in the possession of Government. The land for the road would be given by the Government, and merely the expense of construction would fall on the applicant; and it seemed to him only a fair provision that the expenses necessary for carrying out the desire of the applicant, which was mainly for his own benefit, should be defrayed by him. If the third of the proposed Sections, providing for the payment of compensation for the land taken up for the construction of the road, was omitted, the expense would be considerably lessened, and the chief objections of some of the hon'ble members would cease. As long as the island was in the possession of the Government, they should, he thought, give the land for the public road. If the island was settled with sub-tenants, a Clause could be easily inserted by the Revenue Authorities that the settlement was made subject to the taking up of any land required for laying out roads, and all that would be required from the applicant would be a deposit of the sum required for constructing the road. He (Mr. Thompson) had been told that, practically, no difficulty had ever been found where an island had become attached to the mainland. A track across the chur was always secured to the water, and soon became as serviceable as most roads in the Mofussil for public traffic.

MR. SUTHERLAND said, he thought the Clause obliging the

riparian proprietor to apply for a road, and to deposit funds for its construction, must defeat the object in view. He was of opinion that the duty of providing roads should rest with the Government. It was sufficiently hard for the poor people to be suddenly shut out from the river; and as Government was the chief beneficiary in the transaction, he thought the expense should fall on it.

After some further conversation, the Section was passed after the following words had been added to the previous Section:—

"The costs thereof to be equally divided between the applicant and the Government."

THE ADVOCATE-GENERAL said, in moving the next Section, he thought it unnecessary to make any observations regarding the objections which had been taken, because, by the amendment adopted, the expense to the extent of one-half was not to fall on the applicant. The first Section was never intended to apply to the case of the continuation of public roads, which, in consequence of an island having become attached to the mainland, had become useless. He understood that the whole subject had reference to the case of the neighbouring proprietor, who, for his own purposes and benefit, required means of access to the river. As regarded other cases, where it was necessary to continue public roads that would not come under the Section, he presumed that in such cases such action as was necessary would be taken by the Government with regard to the general mode of improving the communications of the country. He understood the Section to apply to the case where, for reasons of his own, the neighbouring proprietor desired that he should have opened for him an access across the chur to the river. He (the Advocate General) thought it was quite concession enough that the expense of making the road or path should be divided between the Government and the applicant; and he thought it was only safe that the applicant should be required to make a deposit to meet his moiety of the expense. The Section which he proposed ran thus:—

"In every case the applicant shall be liable to pay and make good to the Government one half of the costs of laying out and constructing such paths and roads as aforesaid, and any moneys due from the applicant under the provisions of this Section, may be deducted and retained by the Collector out of the deposit so made by the applicant as aforesaid."

The motion was agreed to.

Section 6 and the preamble and title were agreed to.

The Council was adjourned to Saturday the 6th June.

Saturday, 6th June, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

F. H. Cowie, Esq., *Advocate-General,*
H. L. Dampier, Esq.,
E. T. Trevor, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Harendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq., and
Koomar Satyanund Ghosal.

POLICE AND CONSERVANCY OF HASTINGS.

MR. HOGG moved for leave to bring in a Bill for subjecting the Southern portion of Hastings to the provisions of the Municipal Acts of Calcutta. He said, the land on which the town of Hastings was built belonged to the Government, and the householders and residents had hitherto simply paid a low rate of rent for the occupation of the land, and had never been subjected to any local tax for conservancy, lighting, Police, and other charges for the advantage and improvement of the place. The object of the present Bill was to impose on the residents of Hastings the same Municipal laws,

regulations, and taxes which now prevailed in Calcutta. When Act VI of 1863, which was the first Municipal Act for Calcutta enacted by this Council, was passed, it included all the places within the local limits of the Ordinary Original Civil Jurisdiction of the High Court. Consequently Hastings, then called Cooly Bazar, Fort William, and the Esplanade, were included within the Town, and subject to all the provisions of Act VI of 1863. But by Section 56 of that Act, houses, buildings, and lands situate in Fort William, on the Esplanade of the Fort, and in Cooly Bazar, were exempted from the house-rate. Notwithstanding the passing of that Act, which evidently intended that the conservancy arrangements for the places mentioned should be made over to the Corporation of Calcutta, Government continued the direct management, through the Commissioner of Police, of those places, and up to the present time had always borne all the expenses.

When last year the Municipal Act was undergoing some amendments, it was suggested that as the Government had not thought proper to make over the municipal administration of Hastings to the Town, it would be wise to recognise the state of affairs which actually existed; and by Section 22 of Act IX of 1867, Fort William, the Esplanade and Cooly Bazar were declared not to be within the meaning of the word "Town" as defined in Act VI of 1863, and used in all the Municipal Acts for Calcutta. Now, however, Hastings was gradually increasing in size, and demanded a more costly system of conservancy arrangements than had hitherto existed, and the Government not being prepared to incur the increased expenditure, and considering that the people who resided in the place should be subjected to the same local taxation as existed in other parts of India, it was proposed to impose on the people taxes sufficient to cover all the expenses incurred on account of them.

That might be done by forming Hastings into a separate Municipality, or by extending to that place the provisions of the Calcutta Municipal Acts; but although extending in size, Hastings was not yet sufficiently large to warrant a Municipal constitution being given to it alone. It was therefore suggested to bring Hastings under the provisions of the Municipal Acts of Calcutta. It would be observed that the Bill proposed to extend the Acts simply to the Southern portion of Hastings. That would require some explanation. When the Government of India intimated that they were prepared to make over Hastings to the Civil authorities, they stated that that portion North of Clyde Row would remain under the direct control of the Military authorities, because the only buildings in that portion of Hastings were the Conductors' Barracks and Commissariat godowns, which were under the control of the Military authorities, and therefore could not conveniently be subjected to the Municipal Acts in force in Calcutta. The expenses for the repairs of roads and lighting in that portion of Hastings were now, and would still be borne by the imperial treasury. It was therefore proposed to extend the provisions of the Calcutta Municipal Acts only to the portion of Hastings lying South of Clyde Row.

The motion was agreed to.

MR. HOGG applied to the President to suspend the Rules for the conduct of business.

THE PRESIDENT having declared the Rules suspended—

MR. HOGG moved that the Bill be read in Council.

The motion was agreed to, and the Bill read accordingly.

MR. HOGG applied that the further consideration of the Bill be postponed until the next meeting of the Council.

The application was agreed to.

POSSESSION OF CHURS AND ISLANDS.

MR. THOMPSON moved that the Bill "to amend the provisions of Act IX of 1847 (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within

the Provinces of Bengal, Behar, and Orissa)" be passed.

The motion was agreed to, and the Bill passed.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER moved that the Report of the Select Committee on the Bill "to amend and consolidate the law for the regulation of Police in Towns under the control of the Lieutenant-Governor of Bengal, and for the conservancy and improvement thereof," be further considered in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

The postponed Section 49 provided the nature of the tax to be levied.

MR. DAMPIER moved that the word "occupation" be substituted for the word "house" in the 11th and 13th lines.

BABOO PEARY CHAND MITTRA stated, that the principle of assessing houses, and not individuals, had already been disposed of by the Council; and if the present motion were agreed to, it would lead to complications, inasmuch as the inmates of a house, instead of the house itself, would be assessed. He therefore thought the word "house" should be retained.

MR. DAMPIER said, he did not intend to use the word "occupation" in the sense suggested by the hon'ble member. He meant it to include barns, store-houses, stables, gardens, tanks, &c., as enumerated in Section 8. If there was any ambiguity in the word "occupation," which was suggested by the learned Advocate General, he would have no objection to substitute any other term which would better express the intention.

After some conversation, the word "holding" was substituted for the word "house."

BABOO RAMANATH TAGORE said, he should bring to the notice of the Council that a petition from the inhabitants of Moorshedabad, Berhampore, and Sydabad had been received, complaining of the increase of the maximum of taxation from Rs. 5 to Rs. 10. The petitioners thought the increase would prove very burdensome to the inhabitants of those and other places to which the Bill might be applied. The Council must be aware that originally the maximum amount stood in the Bill at the pay of a chowkeydar of the lowest grade, but after consideration the Select Committee fixed the sum at Rs. 5, because less than that amount would not be sufficient for a chowkeydar, and the maximum of taxation would remain very uncertain if no definite amount was fixed. The Committee hardly thought that the qustion would be a matter of discussion in the Council. Unfortunately, however, the honble member on his left (Baboo Peary Chand Mittra), in order to prevent one evil, fell into another; that was to say, he moved to increase the maximum assessment from Rs. 5 to Rs. 10, to avoid the evil and uncertainty of there being no limit whatever, as was proposed by another hon'ble member. He (Baboo Ramanath Tagore) thought that, taking into consideration all the circumstances detailed in the petition received by the Council, the maximum of Rs. 5 should be restored, and by doing so the Council would not be conferring any favor on the tax-payers, because the Select Committee had, after due consideration, fixed that sum as the maximum. Thinking, therefore, that Rs. 5 was an adequate maximum, and that the maximum of Rs. 10 would prove a hardship to many, he would move that Rs. 5 be substituted for Rs. 10 in the Section.

THE PRESIDENT said, he would suggest that the hon'ble member should modify his amendment. The present discussion was in continuation of the previous one. The amendment proposed was simply a negative of the amendment moved and carried at the last meeting, and could not therefore be put.

BABOO RAMANATH TAGORE then moved that Rs. 7 be substituted for Rs. 10.

BABOO PEARY CHAND MITTRA said, he had proposed Rs. 10 as the maximum, because he was anxious that the rate should not be left uncertain, as it would have been if the motion of

the hon'ble member on his right (Mr. Hogg) had been carried. But as it now appeared that it was likely not to work well, and to prove a hardship, he (Baboo Peary Chand Mittra) would gladly support the amendment.

The Council then divided:—

Ayes 7.	*Noes* 6.
Koomar Satyanund Ghosal	Mr. Sutherland.
Baboo Peary Chand Mittra.	Mr. Alcock
Baboo Ramanath Tagore.	Mr. Knowles.
Koomar Harendra Krishna.	Mr. Hogg.
Mr. Thompson	Mr. Trevor.
Mr. Dampier.	The Advocate General.
The President.	

The motion was therefore carried, and the Section as amended passed.

On the motion of MR. DAMPIER, the following Section was introduced after Section 59, instead of Section 55, which had been previously transposed to that place:—

"Whenever the period for which any assessment is valid, as provided in Section 59 of this Act, shall be about to expire, notwithstanding anything hereinbefore contained, it shall be lawful for the Magistrate, instead of requiring any Town Committee or Ward Commitee to make a new assessment or to revise and amend the assessments then in force, to adopt the said assessment as the assessment for the year next following."

The postponed Section 60 having been read—

MR. DAMPIER said, by the Bill as printed the assessment was good for one year, and until another was made. Then Section 60 provided that if for three months, either through the laches of the Town Committee or the Magistrate, or for any other reason, no new assessment had been made, then the old assessment should hold good. But at the last meeting of the Council an amendment was carried, to the effect that an assessment once made should ordinarily hold good for three years. It was therefore necessary to make a change in the wording of the present Section to provide for the old assessment holding good after the expiration of the third month of the fourth year, instead of after the expiration of the third month of the second year.

On the motion of MR. DAMPIER, amendments were then made, which made the Section stand thus:—

"If no new assessment be made and published before the expiration of the first three months of any year for which no assessment valid under the provisions of Section 59 shall be in force, the assessment which was in force at the close of the preceding year shall be deemed to be the assessment for the current year."

The following Section was, on the motion of MR. DAMPIER, introduced after the above:—

"As soon as possible after an assessment shall have been adopted under Section 59*a*, or shall have taken effect for the current year under the last preceding Section, the Magistrate shall, in the manner provided in Section 58 for giving public notice that the copies of the list of assessment have been hung up and deposited, give public notice that the assessment in force at the close of the preceding year will continue to have effect during the current year, but it shall not be necessary to hang up fresh copies of such list, and every person whose assessment may be so continued shall be at liberty to appeal against such assessment as if it were a new assessment made upon him."

The postponed Section 61 provided for appeals from assessments, and commenced thus:—

"Any person assessed, who shall be dissatisfied with his assessment * * * * may appeal," &c.

MR. DAMPIER moved the substitution of the words "who shall have been assessed by a Town Committee, and" for the word "assessed" in the first line. He said, the object of the alteration and of the new Section which he proposed to introduce after the present Section, was that an assessee should have no right of appeal to the Magistrate where the assessment was made by a Ward Committee. Where the assessment was made by a Town Committee without the intervention of a Ward Committee, the appeal was, as in the present law, to the Magistrate, whose decision was final. He proposed to provide for that in this Section. But in the following Section, where the Ward Committee would make the assessment in the first instance, the right of appeal would lie

to the Town Committee at a Meeting, and in that case the final decision would rest with them, and there would be no appeal to the Magistrate.

The motion was agreed to.

On the motion of MR. DAMPIER, the proviso at the end of the Section was left out, and the Section as amended agreed to.

The following Section was then inserted on the motion of MR. DAMPIER:—

"Any person who shall have been assessed by a Ward Committee, and who shall be dissatisfied with his assessment, or who shall dispute his occupation of any property or his liability to be assessed, may appeal on unstamped paper to the Town Committee. And with regard to such appeals the Town Committee, at a Meeting, shall proceed as the Magistrate is directed to proceed in the last preceding Section, and the orders passed by the Town Committee at a Meeting on such appeals shall have the same effect and finality as orders passed by the Magistrate under the last preceding Section. Appeals to the Town Committee at a Meeting shall be subject to the same limitation of time as appeals to the Magistrate under the last preceding Section."

The postponed Sections 62 and 63 were passed with verbal amendments.

The postponed Sections 64 to 66 were agreed to.

The postponed Section 5, providing for the formation of unions, having been read—

MR. DAMPIER said, when the question of omitting this Section was first mentioned, he had said that he would agree to it if the rest of the Bill was passed as it stood; that was to say, if no alteration was made that would affect the Bill as regards the extent of the places or towns to which the provisions of the Bill might be extended. He should therefore be glad if the President would allow the consideration of this Section, as well as of Section 6, to stand over till all the other Sections had been passed.

The consideration of the Section and of Section 6 was then postponed.

The postponed Section 10 was agreed to, and Section 11 was passed with a verbal amendment.

The postponed Section 16 provided for the preparation of estimates.

MR. DAMPIER moved the substitution of the words "after consulting" for the words "in consultation with." The object of the amendment, he said, was to meet the objection of the learned Advocate General, that otherwise some definition would be necessary as to how it was to be decided if the members of the Town Committee differed from the Magistrate. As he (Mr. Dampier) had already explained, in the body of the Bill, the Town Committee were a consultative body only; the Magistrate was to have the benefit of their advice, but the responsibility would rest with him. If the wording was altered as now proposed, there would be no longer any doubt as to the meaning.

The motion was agreed to, and the Section as amended passed.

The postponed Section 17 was passed after a verbal amendment.

MR. DAMPIER said, he would now move two amendments in Section 46, with the view of simplifying the Section. The principle asserted in that Section was that the Government would have power to vest the Town Committee, or the Town Committee at a Meeting, with the powers of the Magistrate as defined in certain Sections of the Bill. Instead of cumbering this Section with a long list of numbers, he proposed to substitute for them the words "as enumerated in Schedules J and K to this Act annexed." It was impossible to draw up the Schedules until the Bill had been finally settled; but the principle being affirmed, the Schedules alone would remain to be passed.

The motion was agreed to, and the Section as amended passed.

The interpretation Section, the consideration of which was postponed, was then passed with a few verbal amendments, and the omission of the Clause defining "arable lands."

Section 5, regarding the formation of unions, was then, on the motion of MR. DAMPIER, omitted, and Section 6 was passed with verbal amendments.

The postponed Section 92 was passed with the change of the short title

from "The Mofussil Towns Act" to "The District Towns Act."

The further consideration of the Bill was postponed.

RECOVERY OF ARREARS OF REVENUE AND PUBLIC DEMANDS.

THE ADVOCATE GENERAL moved that the Report of the Select Committee on the Bill "to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue" be taken into consideration, in order to the settlement of the Clauses of the Bill, and that the Clauses be considered for settlement in the form recommended by the Select Committee. He said, although the Report of the Committee had been for some days in the hands of hon'ble members, he thought it desirable to make a few observations by way of further explanation of the reasons which had operated on the Committee in making the principal alterations that they had made on the Bill as committed to them.

As the Bill stood, the effect of a sale in respect of arrears not accruing, or in respect of demands not accruing, on the estate, would have been that the purchaser at such sale would have been in the same position as the purchaser at the sale of an estate (in the ordinary sense of the word) for arrears of revenue accruing on the estate itself. It appeared to the Committee that it was not desirable nor necessary that the same effect should be given to sales in cases for which the Bill provided, inasmuch as by the law, even as it at present stood under Act XI of 1859, he apprehended that the effect of a sale for arrears, even from estates where the arrear was due from the proprietor, was limited to the case of the arrear being due from the particular estate which was put up and sold, and therefore it would not be necessary, or even proper, that more extended application should be given to the effect of sales of the nature referred to in the first portion of the Committee's Report, than was given under Act XI of 1859 to the sales there contemplated. The theory of the Bill as first brought before the Council, before it went into Committee, was that the effect of a certificate should be final as regards all questions of irregularity and omission to give notice as against proprietors, and that by way of providing against any hardships that might result from that effect given to certificates, provision should be made for personal service, in all possible cases, of notice. But in the discussions in Committee the conclusion was come to on the facts that it would be impracticable to effect the service of the notices which the Bill originally contemplated, by reason that the Collector, who was to serve the notices, was in the great majority of instances not in the possession of, and had no means of obtaining, information as to who were *all* the proprietors who in the particular case would be entitled to notice; and therefore it had been thought better, instead of providing for what would be practically inoperative, to extend the principle of Act XI of 1859 with regard to the posting of notices, by providing that the notices required by that Act and the present Bill should be posted, in addition to the notices mentioned in Act XI of 1859, at the Sub-divisional Cutcherry. It was believed that, with that rule, and with the provision of the existing law with regard to notices on the ryots not to pay rent to the defaulting proprietors, all possible security would be attained.

In Committee certain provisions were introduced with regard to the registration of under-tenures or farms. There was some reason to suppose that a little misunderstanding had prevailed with regard to these provisions. Under the existing law, the holder of any tenure or farm who held immediately under the proprietor of an estate, might protect himself from the effects of a sale for arrears of revenue by special registration; but as the law stood, no holder of a tenure, other than the holder of the first tenure immediately from the proprietor, could so protect himself. Then the present Bill

proposed to make these under-tenures saleable as well for arrears of Government revenue as of Government demands, and therefore a Section was introduced giving the same power to the holders of such under-tenures to protect themselves by registration, as under the present law was possessed by the holders of tenures held immediately under the actual proprietor. The effect of such registration would be that tenures so registered would stand, whether or not the estate out of which the tenure was carved had been sold, or whether any intermediate tenure was sold. When the Council came to the Section to which he was now referring, he should propose, to avoid all ambiguity, to provide in express terms that that should be the effect of the registration. It was also proposed in this registration Section, and following the principle laid down with regard to registration in Act XI of 1859, that in the application for registration the applicant should state the name or names of all the intermediate tenure-holders between himself and the proprietor of the estate, and also that of the proprietor of the estate. Under Act XI of 1859, the immediate holder of an under-tenure, who was the only person who could register, had in his application to insert the name of the proprietor of the estate. In the case under the Bill, following that principle, the applicant, however distant from the original proprietor, would be required to name all those who were intermediate. It was suggested to him (the Advocate General) that there were estates in which there were so many successive under-tenures carved out of the estate, that in many cases the under-tenant might not be able to ascertain the names of all the holders between himself and the immediate recorded proprietor of the estate. That was a difficulty which could not be remedied, and certainly it was not putting the holders of such tenures in a worse but in a better position than they were, because at present they were absolutely without any remedy to protect themselves by registration against the sale of the estate; and as the making such tenures saleable for Government revenue or demands was only one portion of the general object and principle of the Bill, he (the Advocate General) did not see that it was possible to make any distinction in the case of such tenures, or to do away with the provision that the application should contain the names of all the intermediate holders.

The Bill, as it went into Committee, gave a more extended effect to the certificate of the Collector than it now did, and possibly the Council would agree that, instead of the certificate operating, as it would have done, on all the property, moveable or immoveable, and wheresoever situate, of the defaulter, it should only operate as a lien on immoveable property, and on such property as was situated within the jurisdiction in which the certificate was filed, or where execution was sought, and, in either district, against the property situate in that district until execution was actually issued. It had been thought proper, with regard to the recovery of demands other than revenue, that in all cases, inasmuch as the property to be proceeded against would in most cases be immoveable property, to make what was substantially a slight alteration in the existing law. He was now assuming that the Section which related to the recovery of public demands should stand. With regard to one class of cases—a large one—of public demands leviable from the sureties of accountants and others, under Act XII of 1850 execution was levied against the immoveable property of the defaulter or his sureties by the officer under whom the defaulter was employed. It seemed, however, to the Committee very undesirable that such power should be given to any one except the person best qualified to deal with the matter, namely, the Collector of the District within which the property was situated, and accordingly the Committee had provided in all cases, as well as regards the recovery of demands of

Government revenue, that the jurisdiction as regards the Bill should be confined to the Collector.

As already intimated in the Report of the Select Committee, they had not been able to agree as to the principle of applying the provisions of the Bill to the recovery of demands other than revenue; he said other than revenue, because he was happy to say that the contention of a distinction between Government rent and revenue had been abandoned. The Committee had been unanimous that the farmer should stand in the same position as a zemindar. But with regard to the question of other public demands, he should wait to hear the arguments advanced by those who disapproved of the Bill in that respect, before submitting his own views. He had before generally expressed his views on the subject, and therefore merely adverted in that brief way to the fact that there had been a difference of opinion between himself and the Committee.

The motion was agreed to.

The consideration of Section 1 was reserved.

Section 2 was passed with a verbal amendment.

Sections 3, 4, and 5 were agreed to.

Section 6 provided that a certificate of title should be conclusive evidence of regularity.

BABOO RAMANATH TAGORE said, he thought this Section would operate with great hardship on the ex-proprietors of the estate to be sold, because it gave an absolute title to the purchaser, notwithstanding that there might have been many irregularities in conducting the sale. He thought the certificate of title to be given under this Bill ought to be on the same footing as that laid down in Section 28 of Act XI of 1859; and he did not see any reason why the Council should depart from that provision. If this Section of the present Bill remained, an ex-proprietor would have no right to go to a Court of Law—a power which was given to him by Act XI of 1859, and it would be a great hardship to him, not only to lose his property, but to have no chance of redress. He therefore thought that the Section ought to be so amended that it should be made consistent with the provisions of Section 28 of Act XI of 1859, or, if necessary, be omitted altogether. He would therefore move, if the Council should so wish it, that the Section be omitted.

BABOO PEARY CHAND MITTRA said, he thought that, instead of being omitted altogether, the Section should be made to correspond with Section 28 of Act XI of 1859. Instead of precluding the ex-proprietor from contesting his claim in the Civil Court, the Section ought simply to provide for the grant to the purchaser of a certificate of the interest of the ex-proprietor conveyed to him.

THE ADVOCATE GENERAL said, he would oppose the amendment. He was not in a position to know whether or not it was the intention of the hon'ble member to substitute anything for this Section. He (the Advocate General) thought there was every possible difference between the effect of a certificate under the Act as regards tenures other than estates, and as regards sales, in the way this Bill contemplated, not for arrears of revenue accruing on the estate sold. The effect of Section 28 of Act XI of 1859, to which the hon'ble member had referred, was that the certificate was to be deemed in any Court of Justice "sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified." The present Bill did not propose to give to a sale under it in any way the effect that the certificate under that Act gave, as under Act VIII of 1859, the right, title, and interest of the defaulter could alone be sold. Therefore, as far as regards sales under Act XI of 1859, the certificate of title was a totally different thing. But as regards sales under Act XI of 1859, it was considered by the majority of the Committee more for the general public interest, that the effect of a sale should not in any case, or under any circumstances, be subject to be after-

wards disputed in the Civil Court, on the principle that in the long run it had been found that the rise in the general value of property, and the security of title, had been greater or less as greater or less effect and strictness had been given to the law with regard to sales. He made these observations as expressive of his objection to the amendment, but he did not think it fair or satisfactory that a matter of this kind, involving a point of principle, should be brought forward without any previous notice, when the Report of the Committee had been so long in the hands of hon'ble members, who had full opportunity of studying the provisions of the Bill as amended by the Committee, and therefore, with the permission of the President, he would wish that the consideration of this Section should stand over.

The further consideration of the Section was postponed.

Section 7 was agreed to.

Section 8 provided for the registry of tenures.

THE ADVOCATE-GENERAL moved the insertion of the words "Sections 39, 40, 41, 42, 43, and 44" before the words "Act XI of 1859."

MR. DAMPIER said, he really thought that when important amendments of this sort were brought forward, due notice of them should be given. There was one hon'ble member at least who had not considered the question whether or not special registration was applicable to the tenures dealt with by this Bill. He should be glad if the consideration of the Bill was postponed, with the object that members who had important amendments to propose should print and circulate them.

THE ADVOCATE-GENERAL said, he had no objection. Possibly the Council would be able to make more real progress if notice was given of the amendments to be proposed; and he hoped that hon'ble members who had amendments to propose would cause them to be circulated early in the week.

The further consideration of the Bill was then postponed.

The Council adjourned to Saturday, the 13th instant.

Saturday, 13th June, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
H. L Dampier, Esq.,
A. R. Thompson, Esq,
S. S. Hogg Esq.,
Kooomar Hurendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

POLICE AND CONSERVANCY OF HASTINGS.

MR. HOGG said, as a memorial from the house-holders and residents at Hastings had just been received, drawing attention to the several provisions of the Bill "for subjecting the Southern portion of Hastings to the provisions of the Municipal Acts of Calcutta," he would ask that the consideration of the Bill be postponed to the next meeting, to enable the Council to consider the memorial received.

BABOO PEARY CHAND MITTRA said, he had not the least objection to the postponement of the consideration of the Bill, but he thought it would be well if the hon'ble mover were to lay before the Council an estimate of the probable amount of the income and expenditure of Hastings; and should there be any deficit, if he would show how it was proposed that the deficit should be met. This information was absolutely necessary before the Bill could be properly considered. It would be well if it was understood that all necessary information would be submitted to the Council before they were asked to pass the Bill.

MR. HOGG said, he would at the next meeting be prepared to answer any questions, and to give any information the hon'ble member might require.

[illegible]n of the Bill was postponed.

RECOVERY OF ARREARS OF REVENUE AND PUBLIC DEMANDS.

THE ADVOCATE GENERAL said, the Council were aware that for some days several amendments which he had proposed had been in circulation, and also two important amendments proposed by the hon'ble member opposite (Baboo Ramanath Tagore). Since then, he (the Advocate General) had come to the conclusion that before the Bill could be finally reduced into what might be considered a desirable form, some other modifications, and not unimportant modifications, would be necessary; and he might also mention that since the last meeting a communication had been brought to his notice from the Commissioner of Cuttack (in which district the practical operation of the proposed measure would be more tested than in any other part of Bengal) which contained many points requiring consideration. No doubt the Council might now proceed, to a certain extent, to the further consideration of the Clauses of the Bill; but he thought that, on the whole, perhaps the better course would be that whatever further modifications the Bill might require should be submitted all together as early as possible in the course of the next week, so that the Council should be in a position to consider the Bill as a whole, and determine as to what its final shape ought to be. He would therefore propose that the further consideration of the Bill should be postponed to the next meeting of the Council.

The further consideration of the Bill was postponed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. THOMPSON moved for leave to bring in a Bill to amend the procedure in suits between landlords and tenants. He said, the object of the proposed measure was in the first place to transfer the adjudication of suits between landlords and tenants now triable by the Revenue Courts to the Courts of Civil Jurisdiction; and, secondly, to amend the procedure under which that class of suits was now tried. The Council was aware that the laws and Regulations which governed the procedure and trial of what were formerly called summary suits for arrears of rent between landlord and tenant had undergone many changes. Previously to the passing of Act X of 1859, the rules and practice in the conduct and institution of summary suits between landlords and tenants for the recovery of rent, and complaints of illegal distraint for rent, were scattered over the pages of many old Regulations, dating from the year 1793 to 1839, and the necessity for the revision and consolidation of the Distraint and Summary Suit Laws having been generally recognized, Act X of 1859 was passed, after much deliberation and debate, with the object of providing one uniform procedure for all such suits. It would not, perhaps, be considered necessary for him to impose upon the Council an explanation in detail of all the stages through which the rent laws in the country had passed, the Courts before which they were cognizable, and the procedure under which they were tried. As he had before remarked, these changes had been frequent and numerous. It would be sufficient to say that originally the cognizance of this class of suits was vested in the Civil Courts. By a later Regulation (VII of 1799), the Judges were empowered to refer to the Collector for preparation and report cases of that kind which came before them; and from that time all such suits were heard in the first instance by Collectors of land revenue. This system was, however, found not to be sufficiently expeditious for the adjudication of such cases, and by a later law, Regulation XIV of 1824, Collectors were authorized not only to report, but to hear, investigate, and determine such suits, but only when referred to them by the Civil Courts. The delay which arose through such references was, however, found to be objectionable, and by

Regulation VIII of 1831, the authority of the Civil Courts to entertain these suits was finally rescinded, and the Collectors were empowered to take up these cases and try them, and that power was recognized in Act X of 1859.

It would be scarcely necessary to remind the Council that the question of jurisdiction as to the cognizance of suits of this nature was one which was seriously and long discussed in the deliberations of the Legislature at the time when the existing rent law was under consideration; and though there were many influential voices against the exclusive jurisdiction of the Revenue Courts, the opinion prevailed, and was finally adopted, that all cases which could arise between landlord and tenant were best left to the primary cognizance of the Revenue authorities. For the last eight years that law had been in force.

Now, it would be necessary to bear in mind that the class of suits triable by Collectors before Act X of 1859 was passed, were entirely of a summary nature; they were either for the realization of arrears of rent on the part of the zemindar, or complaints on account of illegal exactions on the part of the ryot—cases which went under the familiar names of *kuftum* and *punjum*. But by Act X of 1859, a great many suits that were formerly triable by the regular Courts were transferred to the cognizance of Revenue Officers; and it was not only that cases for the recovery of arrears of rent or complaints of improper exactions remained for adjudication by those officers; but cases involving very intricate questions of law, and important interests in landed property were, under Act X of 1859, brought before the Collectors and their subordinates.

He (Mr. Thompson) would not go the length of saying that the experiment had been a total failure, and that the Revenue Courts had proved themselves wholly incompetent to adjudicate in all such cases; but this he could assert that the opinion now, of all competent to give an opinion upon the subject, was that the work would be better done if transferred to the regular Civil Courts of the country. This was founded on the knowledge that the Civil Courts generally were now presided over by officers who had had special preparation for their duties; and that from their official habits and experience such officers would be better fitted to deal with the class of suits which the rent-law had given rise to, than executive officers who had had no such training, and who had to give their attention to many other duties.

Objection had been made to him that as the present system had been so long in force, it would be better not to change it now, as the Deputy Collectors had become familiar with the procedure in the trial of rent suits. He begged to oppose to that, that as in all branches of the rent-laws there was now a large body of judicial precedents laid down in the decisions of the High Court with which the Civil Courts were familiar, there would be no disadvantage in that respect by transferring the cognizance of such suits to those Courts.

He (Mr. Thompson) would advert to another important consideration as pointing to the advisability of the proposed transfer of jurisdiction. It had been advanced by those who desired that the primary cognizance of rent suits should remain in the hands of the Collectors, that, considering that large numbers of sub-divisions had been created throughout the country, and that generally Deputy Collectors had been placed in charge of them, the means of redress would be abundant, and facilities afforded to the poorer classes (for whose benefit Act X of 1859 was principally intended) in the conduct of their cases. He did not know how far that expectation had been realized, but certainly in the remoter districts of Bengal, there were many more Moonsiffees than Collectorates or Sub-divisions, and all recent enquiries clearly showed (as would be seen from the annexures to the Bill) that whereas sub-divisional officers were overburdened with work, the files of the Moonsiffs' Courts were comparatively

light. The Courts of the Moonsiffs in all parts of the country had a local jurisdiction of limited extent, and therefore no objection could rightly be raised that facilities for redress would not be afforded if the proposed transfer was effected. He thought rather that there would be as great, if not greater, facilities under the proposed change; and if we took into account the training and experience of the Moonsiffs, supervised as they now were by the High Court, he fully anticipated, not only that the expedition in the disposal of suits would be greater, but that more satisfaction would be given to the parties by the better and more uniform administration of the law.

With this view, he had, with the assistance of the learned Assistant Secretary, brought in a Bill to transfer the adjudication of suits between landlords and tenants from the Revenue to the Civil Courts; and he proposed in the institution and trial of such suits the adoption generally, with a few necessary modifications, of the procedure of Act VIII of 1859. It was with some hesitation he had taken that course, because he had found it remarked by many who were conversant with the rent law, that the procedure under Act X of 1859 was admirably suited for cases of a summary character; and unless very good grounds were shown, it was not advisable to change it. Still, the advice of those with whom he had consulted favoured the view that it would be better, on the whole, to adopt the procedure of Act VIII of 1859, and the Acts amending it, with such modifications as might be necessary for the speedy determination of rent cases. And while it was certain that under that Code even regular civil suits were disposed of now with a despatch which gave no cause for complaint, the advantage would be very great in having one code of procedure for all cases in the Civil Courts.

The Bill was only to have effect in those parts where the permanent settlement prevailed, and so far Act X of 1859 would not be repealed, but would remain in force in the places to which the new law did not extend. But there would be a Clause empowering the Government to extend the provisions of the Act to any other places which it might think fit.

With those remarks, he begged to move for leave to bring in the Bill.

The motion was agreed to.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER said, the next motion was in his name; but before making the motion formally, he would ask leave to refer once more to the doubts which had existed, and he was afraid existed still, as to the possibility of working the Bill, and as to the objects of it being appreciated by the people in towns. Here was an extract from a general report on the affairs of his District from a Magistrate on whom he was sure great reliance could be placed. The report was not written in reference to this Bill, but the passage he would read occurred incidentally in one paragraph of the report. The Magistrate said:—

"In my tour I did my utmost to foster in the people a desire for Municipal Institutions. In most of the chowkeedary unions the respectable inhabitants have generally held aloof, and the Punchayet has consisted of men of no local standing or position. At Chogdah and Jagooly we had great difficulty in getting any one to serve at all: but by treating the members of the Punchayet like Municipal Commissioners and by consulting them as to the disposal of the funds, the strength of the Police, and other questions, I have found no difficulty in inducing the leading people to the management of their own towns. With a little tact and care, I am sure that Municipal Institutions can be very greatly and advantageously developed."

He (Mr. Dampier) thought that that was a strong confirmation of the views he had expressed as to the Bill before the Council. He would now move that the Report of the Select Committee on the Bill "to amend and consolidate the law for the regulation of Police in Towns under the control of the Lieutenant-Governor of Bengal, and for the conser-

vancy and improvement thereof," be further considered in order to the settlement of the Clauses of the Bill.

On the motion of MR. DAMPIER, a verbal amendment was made at the beginning of Section III, and the following words were substituted for the first proviso in the Section :—

"Provided always that any assessment, rate, or tax which may be in force under the said Acts, or any of them, in any town at the time when this Act may come into operation in such town, shall continue to be levied under the procedure in those Acts until an assessment, under the provisions hereinafter contained, shall be in force in such town, and that all the powers and provisions in and by those Acts, or any of them, conferred for the recovery of arrears of assessments, rates, or taxes under those Acts or any of them, shall continue to be in force for the recovery of such arrears until all such arrears shall have been recovered, or shall have ceased to be recoverable, and all arrears so collected shall become part of the Town Fund of such town, and may be expended for any of the purposes of this Act."

The object of these amendments, Mr. Dampier said, was to allow outstanding arrears, under the old Chowkeydaree tax, to be collected after the assessments, under the new Act, came into force. When the new assessment came into force there would be certain arrears under the old Act still due, and the object was to allow those arrears being collected simultaneously with the current demands.

THE ADVOCATE GENERAL said, he understood the object of the amendment to apply to arrears of rates or taxes which would continue to be enforced according to the provisions of the old Act. But he wished to know whether it was intended that the procedure of the old law should be applicable to such arrears, although the new Act was in operation. As the amendment stood, the provisions of the old Act were made to continue if they were in force at the time when this Act came into operation, and they were to continue until the new assessment was made. He thought that it would make the provision quite clear, if, at the end of the amendment, with reference to the recovery of these arrears, the words "notwithstanding that this Act may have come into operation in such town" were inserted.

MR. DAMPIER intimated that the Advocate General's suggestion would exactly meet his intention, and he would therefore adopt it.

The amendment, with the addition proposed, was then agreed to.

Verbal amendments were then made, on the motion of Mr. Dampier, in Sections 4, 6, 7, 12, 17, 24, 28, 29, 38, and 40.

Section 43, which was on the subject of appeals, was omitted, most of the matters contained in the Section being provided for in the subsequent provisions of the Bill.

Verbal amendments were made in Sections 49, 51, 52, and 54.

Section 58 provided that appeals from assessments made by the Town Committee should be made on unstamped paper to the Magistrate.

MR. DAMPIER moved verbal amendments to the effect that the appeals should be made to the Town Committee, who, if they should not grant the prayer of the appeal, should submit the decision of the matter to the Magistrate.

THE ADVOCATE GENERAL said that as the Section stood, the appeal would be on unstamped paper; but that appeared to conflict with the provisions of Act XXVII of 1857 of the Imperial Legislature, in the Schedule to which certain stamps were imposed on certain specified classes of petitions; and inasmuch as the Schedule, in so far as it related to petitions, was limited in its terms to petitions of appeal to Municipal Commissioners in the Presidency Towns, the appeals which Section 59 provided from the decisions of Ward to Town Committees might properly be made on unstamped paper. But with regard to appeals to the Magistrate which this Section provided, the Schedule to the Stamp Act did impose a stamp on any petition to a Magistrate in his executive capacity. The effect,

however, of requiring an eight anna stamp on appeals under this clause would be such as would practically render the clause inoperative. It was therefore proposed that instead of the petition being presented to the Magistrate, it should be presented to the Town Committee, who would then either determine the matter in favor of the applicant, or, if they could not do so, would refer the matter to the Magistrate; but that reference would not be in the way of petition, and would not therefore require a stamp.

MR. DAMPIER said, he would wish it to be understood that there was nothing in the present amendment which conflicted with or which evaded the real intention of the Stamp Law. Its object was to get over a difficulty in the wording of the Stamp Law, which under the circumstances which had now arisen was opposed to the spirit of that law. The Stamp Law deliberately and specifically exempted petitions of appeal from the "Chowkeydaree assessment," but the assessment under this Bill could no longer be called a Chowkeydaree assessment; so that petitions of appeal presented directly to a Magistrate regarding it would no longer come under the exemption, but by the letter of the law would be subject to a stamp of eight annas. By the device contained in the Section as amended, the petition of appeal would be actually presented to the Town Committee, and would, therefore, not require to be written on stamped paper, while the final decision of the appeal would lie with the Magistrate. The course was strictly in accordance with the intention of the framers of the Stamp Law.

The amendment was then agreed to.

MR. DAMPIER moved the introduction of the following Section after Section 58:—

"Any person who shall have been assessed by a Town Committee, of which the Magistrate has been appointed a member, and who shall be dissatisfied with his assessment, or who shall dispute his occupation of any property, or his liability to be assessed, may apply on unstamped paper to the Town Committee for a review of the assessment so far as regards himself; and with regard to such applications the Town Committee at a Meeting shall proceed as the Magistrate is directed to proceed in Section LVIII, and the orders passed by the Town Committee on such application shall have the same effect and finality as orders passed by the Magistrate under Section LVIII. Applications under this Section to the Town Committee at a Meeting shall be subject to the same limitation of time as appeals to the Magistrate under Section LVIII"

The Advocate General.

He said, he need only repeat what he said at the last meeting. The object of Section 58 was to provide for an appeal from assessments made directly by Town Committees of which the Magistrate was not a member. Then this new Section would provide for a review (not an appeal) of the assessment where the Magistrate *was* a member of the Town Committee. It would clearly be absurd to give an appeal against the assessment made by that body to the Magistrate. The Section provided that the decision of the Town Committee on their review would be final. The next Section (59) provided for an appeal to the Town Committtee from assessments of Ward Committees.

The Section was agreed to.

Verbal amendments were made in Section 60.

MR. DAMPIER moved the introduction of the following Section after Section 60:—

"It shall be lawful for any person, upon whom any assessment shall have been made, who shall, during the period for which such assessment is valid, have ceased to occupy any property in respect to which he may have been assessed, or whose property to be protected, and circumstances may have changed during the period aforesaid, to apply on unstamped paper to the Magistrate, and the Magistrate, after making such enquires as he may deem necessary, by examination of the applicant on oath or solemn affirmation, or otherwise, may amend the assessment of such applicant as to him shall appear just, or may confirm the same, and in case he shall confirm the said assessment, may order that the applicant shall pay such reasonable costs as may have been incurred by reason of such application. The decision of such Magistrate upon such application shall be final."

The object, he said, was to enable persons who had been assessed, but whose circumstances had changed, or property to be protected had deteriorated in value during the currency of the assessment, to obtain relief, and also to enable persons, who had ceased to occupy any property in respect of which they might have been assessed, to have their names struck off the list of tax-payers.

The Section was agreed to.

Verbal amendments were made in Sections 64, 74, 75, and 78.

MR. DAMPIER moved the introduction of the following Section after Section 82:—

"In any place to which this Act shall not have been extended, and to which the provisions of the said Act XX of 1856 have been or shall be extended, it shall be lawful for the Magistrate, by the ways and means in and by the same Act provided for raising the amount of the expense of Chowkeydars appointed under the said Act, to cause to be levied such sum as to him shall seem meet, and apply the same in cleansing such place, or in lighting or otherwise improving the same. Provided that the aggregate amount so to be raised shall not, together with the amount to be raised under the provisions of the said Act VI of 1867, exceed the average of two annas per mensem for each house, and the amount assessed in respect of any one house shall not exceed five Rupees per mensem."

The object of the Section was to leave the Magistrate exactly as he was under Act XX of 1856, with the same powers that he had under that Act in places to which the new law did not extend, and to prevent those powers being altered in any way by any recent legislation that had taken place.

The Section was agreed to.

KOOMAR HARENDRA KRISHNA moved the omission of the words "tract of country" from the definition of the word "Place" in Section 1. The Council, he said, had omitted entirely the Section providing for the formation of unions; but if, by the definition of the word "Place," we included a tract of country, the result would be the same as if power was given to form unions. If this definition stood as it was, places at a considerable distance from each other might be included together, which, he believed, was not what the Bill now contemplated.

MR. DAMPIER said, he would ask the hon'ble member whether he thought (to go back to an example that had already been worn threadbare) that what were now called the Suburban Unions ought not to be treated as one town. He (Mr. Dampier) quite agreed in the opinion that the operation of the Act should be confined to one town in the ordinary acceptation of the word; that you ought not to skip over a large tract of land, and then pick out another town to form one municipality with the first. But he had found it perfectly impossible to get some definition that would exactly hit off what was intended. The proposed amendment would oblige the Executive Government to divide places for the operation of the Act, which were the same in everything but name. He did not see how that difficulty was to be got over if the Council thought proper to start with the assumption that the object of the Executive Government would be to extend the Act to the whole of Lower Bengal and to bring under its operation places which were unfit for it. It would be seen that under Section 4 nothing in the Act would authorize the extension of the law to any place inhabited by persons more than one-half of whom might be employed in agriculture only. The Bill was not therefore open to the abuse which the hon'ble member pointed out. If the Government were to attempt anything in the shape of trying to make unions by including rural tracts, the Government would be transgressing the provisions of Section 4, and such an extension of the Act would be illegal.

MR. HOGG said, if the word "Place" stood in Section 4, the Magistrate, acting on behalf of Government, would be entitled to take into account the total population of the town, and all the villages included in any tract of country. By that means a great number of

villages, exclusively inhabited by a rural and agricultural population, would be brought within the incidence of the tax. For instance, a town in which it would be right to introduce the Act, might consist of two or three thousand persons, and the villages in a surrounding tract of country might contain one or two thousand. Taking then the total population of the whole tract, and deducting the agricultural population, it would then be found that the agricultural population was not more than one-half. Any number of villages, the population of which was entirely rural, might thus be brought under the operation of the law, which was certainly not intended.

MR. DAMPIER said, he admitted the force of the objection taken, and if the Hon'ble member could show how it could be remedied, he would be happy to adopt the amendment.

MR. THOMPSON said, he would support the amendment, because, by the change of the word "village" in Section 4, to "Place" the views adopted by the Select Committee were quite upset. He would put it to the Council generally whether the interpretation given to the word "Place" would not make it capable for the Government to extend the Act to places which were not contemplated. If it was impracticable to omit the words "tract of country" from the definition of the word "Place" in the Interpetration Clause, the word "village," he thought, ought to remain in Section 4.

The PRESIDENT said, he should prefer to see the interpretation of the word "Place" remain as it was, and the word "Place" in Section 4 again altered to "village," as it originally stood. He thought that would make it impossible to include two separate towns together as one town.

The Council then divided on the amendment that the words "or tract of country" be omitted from the Interpretation of the word "Place" in Section 1:

AYES 6.	NOES 6.
Koomar Satyanund Ghosal.	Mr. Sutherland.
Mr Alcock.	Mr. Knowles.
Baboo Peary Chand Mittra.	Mr. Hogg.
Baboo Ramanath Tagore.	Mr. Dampier.
Koomar Harendra Kishna.	The Advocate General.
Mr. Thompson.	The President.

The numbers being equal, the President gave his casting vote with the Noes.

On the motion of Baboo Peary Chand Mittra, the following proviso was added to Section 3:—

"Provided further that no claim on account of arrears under any Act which may be superseded by this Act shall be enforced after three years from the period of such arrears becoming due."

He said, he thought that the recovery of arrears of assessment should be limited as to time. A man should not be required to pay up the arrears of ten or twelve years' assessment. It would be more satisfactory to have a certain time fixed for the recovery of arrears of assessment, and also for confining claims to the real defaulters.

On the motion of Mr. Dampier, the word "village" was restored to Section 4 in substitution of the word "Place," as agreed above.

The preamble was agreed to, and the title was passed with a verbal amendment.

The Council was adjourned to Saturday, the 20th instant.

By subsequent order of the President, the Council was further adjourned to Saturday, the 27th instant.

Saturday, 27th June, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate General,*
H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Hurendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore.
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, and
Koomar Satyanund Ghosal.

POLICE AND CONSERVANCY OF HASTINGS.

MR. HOGG said, before making the motion which stood in the List of Business, he would ask permission to make a few observations with reference to the memorial of the house-owners, occupiers, and inhabitants of Hastings, praying that the Bill which had been introduced should not be passed. The memorialists first alleged that the rent paid by them was high; they then argued that rent and taxation, as far as they were concerned, were synonymous terms, and that therefore it was incorrect to say that they enjoyed an immunity from taxation. They said also that as the Government held a large portion of the land, Government should consent to bear a fair proportion of the cost of the conservancy and police arrangements of the town. They then maintained that the landholders and residents of Hastings were not a class at all eligible to special taxation as contemplated by the Bill; and they further said that if the Council decided that they were to be taxed, it would be more agreeable to them to be brought within the operation of the District Municipal Improvement Act, than under the Calcutta Acts. But what they were particularly anxious for seemed to him to be stated in the concluding clause of the memorial, namely, that they should be formed into a separate Municipality, and that a small tax should be imposed, on the understanding that the Government should pay an amount equal to the sum levied from them by the tax.

With regard to the first statement, that the rent paid for the land was high, he would state that the annual rent that the Government could obtain for the land at its market value was at least Rs. 200 per beegah; and if all the present occupants were to vacate, there would not be the least difficulty in letting the whole of the land at that rate. The present occupiers, however, only paid half the fair annual rental, *i. e.*, Rs. 100 per beegah. The memorialists were evidently wrong in saying that the rent paid by them was a tax, for it was obvious that if the land belonged to private individuals, the inhabitants would have to pay a fair rent in addition to the local taxes; and the mere fact of the Government being the landlord could not exempt them from paying the same taxes as others did.

As regards the Government bearing a fair proportion of the taxes, he might state that it was not the intention of the Government to exempt themselves from the local taxes imposed by the Bill. The whole of the property south of Clyde Row was to be brought under the operation of the proposed Bill. The property north of Clyde Row it was not in the power of this Legislature to bring under taxation, because that portion of Hastings was directly under the control of the Military Authorities; and in making over Hastings to the local Government, the Supreme Government distinctly stated that the northern portion should remain under the control of the Military Authorities.

On the point that the inhabitants of Hastings should be brought under the operation of a special law, he (Mr. Hogg) would observe that Hastings was an integral part of Calcutta, and had it not been specially exempted from taxation by a clause of the Municipal Act, it would have been subject to all the local taxes now imposed in Calcutta. The object of the Bill was simply to repeal the special exemption enacted in favor

of the inhabitants of Hastings by the last Act. That was one objection against extending the District Municipal Improvement Act to Hastings. But there was a still stronger reason against such an extension, namely, that that law could not be extended to any place within the local limits of the ordinary original jurisdiction of the High Court at Calcutta. It would therefore be impossible to concede the request of the memorialists, that they should be brought under the operation of the District Municipal Improvement Act. As, then, Hastings was included within the local limits of the town of Calcutta, he thought it would be inexpedient to form it into a separate Municipality, seeing that Calcutta had already a Corporation. It therefore seemed more reasonable that the local taxation of Calcutta should be extended, than that a small place like Hastings should be formed into a distinct Municipality.

The taxes which would be imposed, if the Bill was passed, would not quite meet the expenses of the police and conservancy of Hastings; there would be a deficit of about Rs. 3,000. The Government was not desirous to impose on the Justices of Calcutta any expense as regards the conservancy or police arrangements of Hastings; and from the rents that the Government would hereafter collect as they now did, the Government would be quite prepared, in the event of its being shown that the administration of the affairs of Hastings had imposed any additional expenditure on the Justices, to reimburse them up to the limit of the amount now levied by Government as rent, which was Rs. 5,000.

With those observations, he would move that the Bill "for subjecting the southern portion of Hastings to the provisions of the Municipal Acts of Calcutta" be taken into consideration in order to the settlement of the clauses.

BABOO PEARY CHAND MITTRA said, it would no doubt be beneficial to the inhabitants of Hastings that it should form a part and parcel of the Calcutta Corporation, because in that case a good deal of the expenditure which would otherwise be incurred would be saved. And as the hon'ble mover of the Bill had said that the Government were prepared to reimburse the Justices to the extent of Rupees 5,000 annually, and that the deficit would only amount to about Rupees 3,000, he saw no objection to the Bill.

The motion was agreed to.

In Section 1 Mr. Hogg moved the omission of the words "which is situate to the southward of Clyde Row," and the substitution for them of the words—

"bounded on the north by Clyde Row, on the south by Tolly's Nullah, on the east by the road leading from Kidderpore Bridge to Clyde Row, and on the west by the Strand Road."

The motion was carried, and the Section as amended agreed to.

Sections 2 and 3 were agreed to.

Section 4 was passed after the alteration of the short title from "The Hastings Act, 1868," to "The Hastings Municipal Act, 1868."

The schedule, preamble, and title were agreed to, and, on the motion of Mr. HOGG, the Bill was passed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. THOMPSON said, in moving that the Bill of which he had charge, "to amend the procedure in suits between landlords and tenants," be read in Council, it would probably be considered proper that he should call attention to some of the principal provisions of the Bill. He might be allowed first to say that the first twenty-two Sections of Act X of 1859, which were declaratory of tenant-right, and of the powers and conditions under which Zemindars could sue for enhancement of rent, would not be affected by this Bill. The present Bill, which related to the future cognizance of suits between landlords and tenants, and to the procedure on trial, would, if passed by the Council, be read in connection with Act X of 1859, as would

be observed by the 61st Section of the Bill.

By the first Section of the present Bill with its eight clauses, comprising what was formerly contained in Sections 23 and 24 of Act X of 1859, it was proposed to transfer all suits triable under Act X of 1859 by Collectors of Land Revenue, to the cognizance of the Civil Courts; and so far it seemed that the course was quite clear. If the principle of the Bill was accepted, that the Civil Courts should have jurisdiction in cases between landlords and tenants, there should be no exception of any of the classes of suits under Sections 23 and 24 of Act X of 1859, but all suits triable under those Sections of that law should be transferred. He referred to that point, because in one part of the annexures to the Bill, in a letter from the Commissioner of Dacca, there was a suggestion made that the cognizance of suits under Clause 1 of Section 23 of Act X of 1859 (which referred to the delivery of pottahs and kabooleuts) should remain, as at present, with the Revenue authorities. If the Council began to make exceptions, he thought they must go much farther. If only the ground of the simplicity of the cases was to guide us in determining whether the cases should be decided by the Revenue or the Civil Courts, there were other classes besides those referred to by the Commissioner of Dacca which might fall under the exemption. For instance, under Clause 4 of the same Section, suits which referred to the recovery of arrears of rent were generally of a character which, if standing by themselves, might be well cognizable by officers of the smallest experience in the Mofussil. They involved no points of difficulty, but in the majority of instances simply depended upon a few questions of fact and a balance of accounts, which required neither judicial experience nor training to decide. And in fact, all cases of a summary character under the rent laws would, taken by themselves, not seem to require any change in the present practice. But what we had to consider was whether, while we were on the point of making a change which on the whole aspect of the case was desirable, it was not better to make the change complete; and he (Mr. Thompson) was certainly of opinion that if the transfer was to be made at all, we should transfer to the Civil Courts the trial and determination of all the cases now cognizable by the Revenue authorities; for this reason, that we should thereby avoid the inconvenience and uncertainty which a double system of procedure in cognate suits would entail; and also because, practically, it came at the end to be the case that all these suits were of a civil nature, and civil procedure and civil tribunals were, on the whole, best adapted for their determination. It was on that view that he proposed to go even farther than merely to transfer what were called rent suits, and to include in the class of cases to be transferred, those applications which fell under Sections 25, 27, and 28 of Act X of 1859, and were triable in the manner provided for suits under the Act. They generally referred to the cases of applications made to the Collector for ejectment of cultivators, farmers, or agents, or to dispossess grantees of land exempt from the payment of revenue; and also cases under Act VI of 1862 of this Council for the measurement of lands, which were all dealt with in the manner of rent suits, and would involve a separate procedure if left to the cognizance of the Revenue Courts. Sections 6, 7, 8, 9, and 10 of the present Bill contained all the Clauses of the existing Acts on this subject.

There was nothing further that required particular notice until we came to the 15th Section, which referred to the presentation and verification of plaints. By the 5th Section of the Bill, it was provided that "save as in this Act was otherwise provided, the proceedings in suits of every description brought under the Act should be regulated by the Code of Civil Procedure." And if we turned to the Civil Procedure Code, we found that the institution of suits commenced by the presentation of the plaint by the plaintiff in person, or by his recognized agent, or by a pleader duly

appointed. It seemed to him advisable to retain in the present Bill the requirements of Act X of 1859, *viz.*, that the plaint must "be presented by the plaintiff or by an authorized agent of the plaintiff who had *personal knowledge of the facts of the case*, or by an agent who should be accompanied by a person who had such knowledge." Those were the words of Act X of 1859, and he (Mr. Thompson,) thought they ought to be retained. The object of the Section would, of course, be manifest; namely, to give the officer who was presiding the opportunity of ascertaining, by examination of the person presenting the plaint, what were the facts of the case, and whether there was a *primâ facie* case for summoning the defendant. He (Mr. Thompson) thought that, in the class of cases to which the Bill applied, such a procedure was of advantage in putting a check on all claims of a fraudulent, frivolous, or malicious nature. The plan was followed in criminal cases before the Magistrate, and might be well adopted in all civil suits. There was no greater evil in the Mofussil than that of cases being thrown into the hands of unscrupulous and untrustworthy agents, who were ready to carry them on without any regard to fact, and could always shelter themselves under the plea that personally they had no knowledge of the case, but were conducting it under instructions from a distance. The necessity for the attendance of some one acquainted with the facts of a claim at the first stage in the proceedings would in a great measure obviate this evil; and it would probably be advisable to add a Section in this place, providing that the Courts should, before registering a plaint, examine the party to ascertain whether there was a *primâ facie* case for adjudication; and that such examination should have a place on the record.

The 16th Section of the Bill provided for the keeping of a separate Register for suits under this Act; and from the 17th to the 24th there was a re-enactment of some of the provisions of Act VI of 1862. They referred chiefly to awards of damages, tenders of rent due, and the like. Those provisions of the law had very seldom been resorted to in good faith, and in many places they were a dead letter. The Act was passed to meet a special emergency at the time of the unfortunate disputes in the Indigo Districts, and those provisions were, perhaps, no longer necessary. Still, with the view of not changing anything in the substantive law, he had thought it better to incorporate those Sections in the Bill, substituting the Civil for the Revenue Courts.

The 31st Section of the Bill corresponded to the 77th Section of Act X of 1859, an important Section, which laid down that if in an action for rent a third party should intervene and claim the rent, he should be made a party to the suit, and the question of the actual receipt and enjoyment of rent by such third party should be enquired into. The same principle was maintained in the present Section, with the addition that there should be no appeal as between the plaintiff and the intervenor; but that either should have the power to establish his title to the rent of the land or tenure by a regular suit in the Civil Courts.

In the Sections relating to the execution of decrees, the general principles of Act X of 1859 had been maintained, namely, that the produce of the land should be held to be hypothecated for the rent; those provisions were contained in Sections 35 to 41 of the present Bill.

The Sections from the 41st almost to the end referred to the question of distraint. It would be of great advantage if it were possible to omit the whole of those Sections, as he believed at the present time they were very seldom resorted to; but still the existence of the process was considered to be expedient and advisable, as it was feared that, if they did not exist, the ryots might cut away their crops and so remove whatever there was of security for the payment of rent. He (Mr. Thompson) had therefore decided in retaining those provisions of Act X of 1859, though it would be a question for the consider-

ation of the Council whether they might not be modified so far, that all the preliminaries between the distrainer and the attaching officer should be carried on at the instance of the Collector of the District, and the simple right of suit affirmed to the party aggrieved by the acts of the distraining landlord.

Section 57 provided that a review of judgment should be allowed in cases brought under this Act. Under Act X of 1859 there was no provision for a review of judgment, except in cases not open to appeal, where a Collector might grant a rehearing; but in transferring the jurisdiction of these suits to the Civil Courts, and adapting to them the Civil Procedure, it had been thought proper to allow a review of judgment, only limiting the period for the application for a review to thirty days. And another addition to the present law was that found in the 31st Section, which allowed, in suits for rejectment, the inclusion of a claim for the mesne profits of the land. At present a separate suit was essential for that purpose, and persons were obliged to resort to the Civil Courts.

If the Bill was referred to a Select Committee, the question whether the whole of the provisions of Act VIII of 1859, modified as proposed in this Bill, were applicable to the trial of suits between landlords and tenants, would have to be determined. If we referred to the fact that Acts VIII and X of 1859 were passed almost simultaneously, and that yet points of distinction existed in the two procedures, it must be inferred that there was an object why there should be those distinctions; and it was not difficult to see that the object clearly was that there should be speedier decisions under Act X of 1859. Still the provisions of Act VIII of 1859 were now capable of being quickly applied, and under the supervision which the Mofussil Courts received from the High Court, he (Mr. Thompson) did not think that there could be any doubt of the advantage of the transfer and the change of procedure as proposed. If the Bill was referred to a Committee, from the information which we should gain from the publication of the Bill, and the opportunity afforded to persons interested to make representations on the subject of it, he did not doubt that they should be able to submit a satisfactory report within such time as it might be thought necessary to do so.

BABOO RAMANATH TAGORE said he would support the Bill, and he was sure no Zemindar who had at heart the interests of his tenants would ever come forward to oppose it. The Bill was a decided improvement on Act X of 1859, inasmuch as it removed the anomalies which that Act sanctioned, to the detriment of the interests of landed proprietors. He also looked on the Bill as the precursor of other improvements which Act X of 1859 required at the hands of the Legislature. When that Act was introduced into the Legislative Council of India, the general impression was, that the Zemindars persecuted and ill-treated their ryots, and did not behave towards them with that kindness and consideration that they deserved. The consequence was that that Act was so framed that every precaution was taken to secure the interests of the ryots, and none for those of the Zemindar. He might say that since Act X of 1859 was passed, the Zemindars had lost all their prestige, and the ryots looked on them as mere Tehsildars intended to collect revenue on behalf of the Government. The time, he hoped, would come when the defects of Act X of 1859 would be rectified.

With regard to the present Bill, he fully endorsed what the hon'ble mover had said in his Statement of Objects and Reasons, that the Collector was not a fit person to be entrusted with the trial of rent suits, because that functionary had other important duties to perform; he had to visit the interior of the country, and he therefore had to neglect many things which he conscientiously did not wish to neglect. But that state of things would now be remedied.

He (Baboo Ramanath Tagore) would now mention one or two objections

which he had to some of the provisions of the Bill.

Section 8 enacted that all measurements made under the Act should be made by the standard pole of measurement of the Pergunnah in which the land was situated. The words "pergunnah pole" indicated something very ambiguous, there being several poles used in the same Pergunnah, and if those words were retained in the Bill, disputes and quarrels would frequently occur, to the great detriment of both landlord and tenant. He hoped, therefore, that this point would be duly considered when the Bill went into Committee.

With regard to Section 13, that Section enacted that suits for the recovery of arrears of rent should be instituted within three years from the last day of the Bengallee year. The limitation for the recovery of arrears was therefore fixed at three years; but he thought that if that limit was extended to six years, it would be beneficial both to the ryots and the Zemindars, because the Zemindar would then not be in so much anxiety to press his ryots to discharge their rents in order to be within the limitation, while the ryots would have six years to pay up gradually, instead of allowing themselves to be oppressed by Zemindars as well as Mahajuns.

There was also an improvement which might be made in Section 21, which provided that a deposit should be received in Court on the application of an under-tenant or ryot made in writing upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent for an amount equal to that which it was intended to deposit. In depositing his rent in Court, the ryot would be required to pay the same stamp duty which he would be required to pay if he instituted a regular suit. As far as the stamp duty on a regular suit went, he (Baboo Ramanath Tagore) had nothing to say; but as to requiring a stamp on the deposit of rent, he did not see the propriety or justice of it. Suppose a ryot went to deposit one rupee as the rent which was due from him to his Zemindar, would he not, according to the law, have to pay a stamp duty of one rupee? That was undoubtedly a great hardship, which ought to be remedied.

With the few exceptions to which he had referred, he believed the Bill before the Council to be unexceptionable, and would gladly support the motion for its being read in Council.

BABOO PEARY CHAND MITTRA said, he would also support the motion for the reading of the Bill. He approved of the principle on which the Bill was framed, though there might be some Sections in it which would admit of improvement. But the great object that the Zemindar should not in any case be permitted to abuse the powers which the Legislature had long conferred on him, and at the same time have every facility in the collection of rent, would, he thought, be well attained by the passing of the present Bill. He remembered distinctly the time when Act X of 1859 was passed. He remembered that Sir Barnes Peacock and Sir Charles Jackson were persistent in their opposition to the transfer of suits between landlords and tenants from the Civil to the Revenue Courts. The principle on which they fought was good; but perhaps there was reason then to have the cognizance of those suits transferred to the Revenue authorities, because in those days the Government had a body of able and experienced Deputy Collectors, many of whom had since retired or died. The present Deputy Collectors had multifarious duties to perform, and it was impossible for them to try these rent and other cases, involving as they did points of intricacy both of fact and of law, with which Moonsiffs and other higher grades of uncovenanted Judicial Officers were more competent to deal, because their principal business was purely of a judicial nature. He (Baboo Peary Chand Mittra) therefore felt great satisfaction that such cases were to be transferred from the Revenue to the Judicial Courts, more

Baboo Ramanath Tagore.

especially as the uncovenanted Judicial service had been lately re-modelled by a recent Act of the Imperial Council, and was under the direct control of the High Court.

One point for consideration would be whether some of the descriptions of cases triable under the Bill—he meant those of a simple nature—might not be tried by Small Cause Courts, because the procedure in those Courts would be less dilatory, and satisfaction might be given to both parties if their cases were tried in a Small Cause Court. That was a suggestion which he hoped the Select Committee to whom the Bill would be referred would take into consideration.

He did not observe any other point on which he wished to make any remark, but would repeat that, on the whole, he felt great satisfaction as to the principle on which the Bill had been framed.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Advocate General, Mr. Dampier, Koomar Harendra Krishna, Mr. Sutherland, Koomar Satyanund Ghosal, and the Mover.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER said, the next motion in the list of business was, that he should move the passing of the District Towns Bill, but he found that in the copies of the Bill issued to hon'ble members in Schedules B. and C., a good many of the numbers had been erroneously printed. As a mistake in the numbers of the Sections to which those Schedules referred would make a material difference in the meaning, he would postpone the passing of the Bill till the next meeting of the Council, and in the meantime would cause amended Schedules to be circulated, that hon'ble members might consider them at leisure.

RECOVERY OF ARREARS OF REVENUE AND PUBLIC DEMANDS.

THE ADVOCATE GENERAL said, he had to move that the Report of the Select Committee on the Bill "to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue" be further considered in order to the settlement of the Clauses of the Bill. Perhaps it would be as well that he should state that he had hoped that the Council would have been able to have got through the Clauses to-day, but he was under the necessity of asking that the portion of the Bill relating to the registration of under-tenures should be postponed, not so much for the consideration of any principle involved, but because of that portion of the Bill not being sufficiently explicit. He referred to the 8th and 9th Sections of the Bill as they then stood. He hoped to circulate by Monday or Tuesday something which would show more fully the circumstances under which under-tenures might be protected from the effects of a sale for arrears of revenue. With that exception, he trusted that all the other Clauses would be got through to-day.

The motion was agreed to.

Section 1, the definition Clause, was passed with several verbal amendments, made pursuant to notice, on the motion of the Advocate General.

Section 2, providing for appeals against sales, having been read—

MR. HOGG said, he wished to draw the attention of the Council to lines 21 to 23 of this Section. He believed the object of the words in those lines was to enable the Commissioner of the Division to obviate any hardship which might be imposed on a landed proprietor owing to inadvertence or carelessness in the sale of an estate. That, he believed, was the object of the following words, to which he had referred:—

"Awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss; if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government Securities on the amount of the deposit or balance of purchase money

during the period of its being retained in the Collector's Office."

He thought the intention was, that in case of carelessness on the part of the proprietor not amounting to intentional defalcation, the Commissioner should be able to step in and annul the sale. The words in lines 21 to 23, however, seemed to preclude the Commissioner dealing with the case in a liberal view. The Section said:—

"And the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act, *which shall appear to him not to have been conducted according to the provisions of this Act.*"

It would seem, therefore, that to enable the Commissioner to deal with a sale in the way contemplated, it must necessarily be held not according to the provisions of the Act. Cases must have come to the notice of every officer where extreme hardship had occurred to landed proprietors. He remembered himself one case where the owner of the estate sold had paid the revenue for the arrears of which the estate was sold, but he had paid it to the wrong Collector: he had paid to the Collector of Beerbhoom, whereas he should have paid to the Collector of Burdwan, within whose Collectorate the estate was situate. He (Mr. Hogg), as Collector of Burdwan, had put up the estate for sale, the proprietor was not aware of the fact, and the Commissioner had no power to annul the sale. He knew of another case, in which through a mistake a proprietor defaulted to the extent of about one anna, and the Collector returned the proprietor as a defaulter of revenue. He thought that the Commissioner should have the power to annul sales which were conducted in accordance with the provisions of the Act, but in which undue hardship might be imposed on the proprietor. He would therefore move the omission of the words:

"which shall appear to him not to have been conducted according to the provisions of this Act."

THE ADVOCATE GENERAL said, he thought that everything that could be necessary was contained in Section 26 of Act XI of 1859, which was most general in its application. It was much more fit that any such general power should be vested in the highest Revenue Authorities, to whom special application should be made for the exercise of those powers. Coupling that provision with the provision contained in the Section under consideration, he did not think that anything else was necessary or desirable.

MR. DAMPIER said, this question had, he believed, been fully discussed in the printed annexures to the Bill, namely in Mr. Chapman's recommendation, and in a Note which in another place he (Mr. Dampier) had written on Mr. Chapman's letter. It should be borne in mind that, under the Bill as now amended, the appeal was to be preferred within 60 days (under the existing Act it was 30 days), and the Commisioner of the Division had the power to reverse a sale on the ground of irregularity, while he also had the power, under Section 26 of Act XI of 1859, which was not to be repealed, if he found that any great hardship, not arising out of any irregularity, had taken place, to keep the appeal pending, and report the circumstances of the case through the Board of Revenue to the Government, who might then, on the ground of hardship, order the reversal of the sale, and direct that such amount of compensation as was necessary be given to the purchaser. That was as the Bill now stood. He (Mr. Dampier) had himself very strongly objected to the technicality which insisted on the presentation of a formal appeal before relief could be given. In the Note to which he had referred, he had said:—

"Now, Section 26 certainly gives the Government authority to cancel a sale, and with Government only that power should rest; but Mr. Chapman and I have, I think, shown that the substantive *intention* of the Legislature in conferring this power is often neutralized by the technical requirement that the hardship shall be brought to notice in the shape of a *formal appeal to the Commissioner within fifteen days.* If this formal condition has not been fulfilled, the Government cannot exercise its power under Section 26, even

though the hardship may (to take the extreme case which I have experienced) have been laid before the Commissioner within the fifteen days by the Collector, the injured proprietor not presenting a formal appeal only because he knew that the Collector had made such a representation."

He was anxious to get rid of the necessity of the official and technical appeal, but in Select Committee that proposition was not accepted, though he had succeeded in getting the learned Advocate General to agree to extend the period of appeal to 60 days, which would partially have the effect which he (Mr. Dampier) had desired. The amendment now proposed would not meet his object, and he thought it would be wrong to leave in the hands of a Commissioner the power to annul a sale merely on the ground of hardship: such a power should be vested in the Government alone.

THE PRESIDENT said, the hon'ble mover of the amendment proposed to transfer to the Commissioner a power which the law reserved to the Government. He (the President) was decidedly of opinion, considering the number of Commissioners that there were, that it was not expedient to transfer a power which ought to be preserved to the Government. It seemed to him that the extension of the term of appeal to 60 days really ought to suffice to give the fullest opportunity to a defaulting proprietor to represent what he had to say to the Commissioner.

MR. HOGG then, with the leave of the President, withdrew his amendment, and the Section was passed with the substitution of 60 days for 30 days as the term of appeal, and one or two corresponding verbal amendments.

Section 3 was agreed to.

MR. DAMPIER said, it would be necessary to make an alteration in consequence of the amendment which had just been adopted for extending the time of appeal to 60 days. As Section 27 of Act XI of 1859 stood, without the amendment which he was about to propose, though the term of appeal was extended to 60 days, the sale would become final after 30 days. He would therefore propose that after Section 3 the following Section be introduced :—

"From the date when this Act comes into operation, the words "sixtieth" and "sixty" shall be substituted for the words "thirtieth" and "thirty" respectively, wherever the said words "occur" in Section 27 of the said Act XI of 1859."

The motion was agreed to.

Section 4 was passed after verbal amendments.

THE ADVOCATE GENERAL moved the introduction of the following Section after Section 4 :—

"It shall be lawful for any Collector to cause such notices as he shall think proper to be served upon any proprietor or person liable to any demand, before proceeding under the provisions of the said Act XI of 1859, or of this Act, to realize from such proprietor or person any arrears of revenue, or any demand which may be due from such proprietor or person; and the cost of serving such notices, not exceeding three, as shall be so served, and not exceeding for the service of each such notice, shall be added to the arrears of revenue or to the demand due from such proprietor or person, and shall be recoverable as if the same were a portion of such arrears of revenue or of such demand."

The Section, he said, had reference to the class of cases mentioned by the Commissioner of Cuttack, where the holders of small tenures or holdings had been in the habit of paying arrears of revenue or demands yearly, in consequence of there being no effective process for the recovery of revenue by instalments; and this Section was intended to enable the Commissioner to follow out what had been, he (the Advocate General) understood, for a number of years the established practice, and had been found to work exceedingly well, though without any direct sanction of law, namely, the practice of issuing certain notices at certain times. It was only fair and reasonable that the costs of serving those notices within certain limits should be made a portion of the amount to be realized.

BABOO PEARY CHAND MITTRA said, if instalments were allowed to accumulate, there were several holders who would be unable to pay a lump

sum afterwards. On the other hand, he admitted that it would be convenient to collect rent yearly, but it would be more convenient to the ryots to pay their rents by instalments as they fell due.

After some conversation,—

THE ADVOCATE GENERAL said, he wanted to reserve as little as possible for the consideration of the next meeting; but as it had been suggested that the Collector might think that it was intended to give him a power to override the general provisions of the Act, he would postpone the consideration of the Section till the next meeting.

THE PRESIDENT said, he thought the Section itself was attended with danger: it might be very dangerous to give the Collector any such power in permanently settled districts, and he thought that the Section ought to be restricted in its terms.

The further consideration of the Section was then postponed.

Section 6 was as follows:—

"Every certificate of title which may be given to any purchaser under the provisions of Section 28 of the said Act XI of 1859, shall be conclusive evidence in favor of such purchaser, and of every person claiming under him, that all notices in or by this Act, or by the said Act XI of 1859, required to be served or posted, have been duly served and posted; and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality, or irregularity in the proceedings under which the sale was had at which such person may have purchased."

BABOO RAMANATH TAGORE said, on the last occasion he had explained his reasons for opposing this Section, but whether his reasons were convincing or not, he would leave the Council to decide. He did not understand the object of keeping the Section as it was. It was said that by giving a person a good title to property, you enhanced the value of that property. He thought that was quite a mistaken notion. The mere possession of a good title did not give the proprietor a good price for his property. The income of the property was what the intending purchaser looked to, and it was that which regulated the price of the thing sold. If the yield of the property was high, the price at which it would sell would be high; if the income was low, the proprietor could only get a low price from the purchaser. He (Baboo Ramanath Tagore) would instance the case of Government Securities, which were incontestibly the best security that could be desired. Why were the four per cents at a discount, and the five per cents at a premium? Was it not because the four per cents yielded less than the five, and that therefore the property was at a discount? Good security or title did not, he maintained, alone rule high prices. He would wish the Council to consider that the amendment he proposed in substitution of the Section in the Bill was nothing new: he merely wished that the Section should be framed on the principle of the cognate Section of Act XI of 1859, for in that case neither the purchaser nor the former proprietor would have any reason to complain.

With those few observations he would move that the following Section be substituted for Section 6 of the Bill:—

"Every certificate of title granted to any purchaser under this Act shall have the same force and effect as a certificate of title given under the provisions of Section 28 of the said Act XI of 1859."

BABOO PEARY CHAND MITTRA said, this Bill professed to be a supplement to Act XI of 1859, and he submitted that its provisions in respect to the grant of certificates of title ought to be the same as those contained in the principal Act. The manner in which Section 6 was worded would lead one to infer that the aggrieved party was precluded from the benefit of any irregularity in the conduct of the sale. The preceding Sections laid down rules as to how notice was to be given; and if there was any defect or irregularity in the notice, it was nothing but just that the person whose property was sacrificed under such irregular notice, should have justice done to him. He (Baboo Peary Chand Mittra) therefore

thought the Section in the Bill unjust to the party whose property was to be sold. The amendment which the hon'ble member proposed simply supplied the provision on this subject of the prior Act to which this Act was supplementary, and he (Baboo Peary Chand Mittra) would with great pleasure support the motion.

MR. THOMPSON said, he was prepared to vote against the amendment. What the hon'ble member proposed was, that we should revert to the same conditions as under Section 28 of Act XI of 1859. The principal reason, however, was, that by maintaining the law as it stood, the provisions of the 33rd Section of Act XI of 1859 would remain intact, whereby a person could go into the Civil Court at the eleventh hour, and after having tried every expedient to void the sale, could sue to have it set aside on the ground of some defect or irregularity in the service of the notice. By the Section as it stood in the Bill, that power would be done away with, and the object would be secured of preventing litigation on the plea that notice had not been properly served. He (Mr. Thompson) thought the provision now introduced was one of the best in the Bill. It put a stop finally to what served only as an excuse for harassing the purchaser; and if it was to the interest of the State to stop unnecessary litigation, nothing could effect that object in a better or surer way, as regards the results of auction purchases, than the present Section. He knew from experience that when every expedient had failed, the proprietor who had lost his estate through his own default, resorted to the plea that the notice required by the Act had not been served in the proper manner, supported by all that false evidence and false assertion which it was the object of this Section to put a stop to.

He would also point out that under the law as it now stood, there was really no excuse for a proprietor in not securing himself against every mischance. There was a fixed certainty as to the last day of payment of all Government revenue. There was a certainty as regards the days of sale as publicly notified; and in addition to this, by the improvements introduced by the present Bill, a very liberal allowance of time after the sale had been given, by which appeal might be made to the Commissioner to rectify any mistakes or fraud of agents. It was quite the duty now of landlords to look more closely after their own interests; and considering the increasing value of all landed property in the country, it was not too much to expect from them that they should be more active in their own concerns, not relying only on the clemency of Government, or the chances of lawsuits. The Section had been carried by a majority of the Select Committee, but in view of the principle involved, it was left for discussion in Council. He should certainly oppose the amendment of the hon'ble Member, wishing the Section as it stood to remain in force.

THE ADVOCATE GENERAL said, understanding as he did the amendment before the Council, which was in substitution (as regards the effect of the certificate to be given in respect of sales of estates or tenures for arrears of revenue) of the whole of the present Section, he would certainly strongly oppose it. He thought that one of the principal benefits, if any benefits were to be expected from the Bill, would be entirely lost by the substitution of the proposed Section. Under the existing law, as regards sales of estates for arrears of Government revenue, the certificate of title which was given under Section 28 of Act XI of 1859, was declared to be sufficient evidence of the purchaser's title, that was to say, it was a conveyance. That was all. That Section was not intended to have any reference whatever to the question of the irregularity of the sale, but was intended to have the effect of a security of title in the occupation of the land, and to enable any person receiving such certificate, who might be desirous of selling his property, to do nothing more than say—"here is my certificate." It was never intended that the certificate should be anything more than a good *primâ facie* commencement of title.

Then in the 33rd Section of the present Act, there was, in the case of sales for arrears of revenue, power to apply to the Civil Court as regards any substantial injury by reason of irregularity or otherwise. That had always appeared to him (the Advocate General) extremely objectionable—though all his experience arose out of cases as they came before the Appellate High Court. He was confident that the operation of the provision had been extremely uncertain; one consideration being in what sense the term "irregularity" was used. If he had not been met by the positive views, strongly expressed by parties who not only had a strong personal interest in the matter, but who were in the habit of attending sales for arrears of revenue, he should have contended for the Section in its integrity as he understood it, namely that the certificate of title, whether under Section 28 of Act XI of 1859 or this Act, had a conclusive effect as regards the purchaser at that sale. It must be remembered that even were the Section in the present Bill to stand as it was, strong as its terms might appear to be, according to the general principles of law which no legislative expression or enactment, however clear, could ever entirely get over, the operation of the Section would be subject to this—that where you could make out a case of fraud with which the purchaser himself was connected, the Civil Court would be prepared to interfere, and would interfere. He would only refer, in support of that statement, to the case appealed to the Privy Council and determined two or three years ago, of Oojooddhyaram against the Nawab Nazim. That case arose under Act I of 1845, which was the same in substance as the later Act; and in that case it was established that where you made out a case of fraud as against the purchaser, the sale would be good as against everybody else except the fraudulent purchaser. But he (the Advocate General) now wished it to be understood that he already had a notice of amendment on the paper which would reduce the effect of the certificate, though he still thought it would have been more advisable to make the effect of the certificate of possession to be conclusive evidence of the fact that everything had been done which ought to have been done, and that nothing had been done which ought not to have been done as regards the service of notices and the like; that was to say, as regards any action on the part of the Government, from whom the intending purchaser had a right to suppose he was making his purchase. And he (the Advocate General) could not understand on what principle of justice or sense, as regards a question of that kind, and considering you took every precaution as to everything in regard to notice, and gave such facilities in regard to the time and mode of appeal to the Commissioner—he could not conceive how the certificate should not at any rate be, not merely as it now stood, a sufficient evidence of the title of the purchaser, but, as he still proposed the Section should stand, conclusive evidence upon any question of irregularity or otherwise in the serving of notice. That would leave every substantial question, namely, of default, or of fraud, whether joined in or not by the purchaser, or by the intended defaulting proprietor, to be contested in the Civil Courts.

He had been asked whether the object he had in view was not based on the notion on his part, that to give that conclusive effect to a certificate would have the result of raising the price of land at Government sales, and therefore the value of land in the whole of Bengal. Now, he fully admitted that that was one of the objects he had in view, and he also admitted that a good title alone did not raise the price of property. The question of price was not determined by title alone, but was subject to more causes than one, though a good title, conjoined with other necessary conditions, did certainly exercise an influence on the value of property.

With those observations, coupled with the amendment which he himself intended to move, he should certainly oppose the amendment before the Council.

The Advocate-General.

The Council then divided :—

	Noes 9.
Baboo Peary Chand Mittra.	Koomar Satayanund Ghosal.
Baboo Ramanath Tagore.	Mr. Sutherland.
Koomar Harendra Krishna.	Mr. Alcock.
	Mr. Knowles.
	Mr. Hogg.
	Mr. Thompson.
	Mr. Dampier.
	The Advocate General.
	The President.

The motion was therefore negatived.

On the motion of the Advocate General, the words "as regards the serving or posting of any notice" were inserted after the word "irregularity" in the 14th line; and the Section as amended was then agreed to.

KOOMAR HARENDRA KRISHNA, with the leave of the President, withdrew the amendment of which he had given notice, as the object he had in view was fully attained by extending the period of appeal from 30 to 60 days, and the consequent amendment which had been made in Section 27 of Act XI of 1859.

Section 7 was agreed to after a verbal amendment.

The consideration of Sections 8 and 9 was postponed.

Sections 10, 11, and 12 were passed after verbal amendments.

Sections 13, 14, and 15 were agreed to.

Sections 16 to 19 were passed after verbal amendments.

Section 20 was agreed to.

Section 21 was passed after verbal amendments.

Section 22, providing for an appeal from the order of a Collector filing a certificate of arrears, having been read—

BABOO RAMANATH TAGORE said, he had on various occasions stated that he had not the least objection to giving the Government summary powers for the realization of the revenue of the country; but in respect of the realization of other demands, Government was not placed in the same position as in respect of revenue proper. The investigation of claims for such demands should not be conducted by the Collector. That Officer being an interested party, his decisions would not command that respect from the community at large which the decisions of the judicial tribunals would. It was easy to administer justice; but it was very difficult to make the people believe that justice had been administered to them. He (Baboo Ramanath Tagore) was quite sure that if the determination of these claims was left in the hands of the Collectors, the people would not be satisfied. He believed that the press and the public had always complained that the judicial service had not been separated, in order to the better administration of justice. Besides, the Collectors were not considered to be fit persons to adjudicate such cases, they having a pressure of other business to attend to. The hon'ble member opposite (Mr. Thompson), in introducing his Bill for transferring from the Collectors to the Civil Courts the cognizance of suits between landlords and tenants, had distinctly stated that the Collectors were not fit persons to conduct judicial investigations. In his Statement of Objects and Reasons, the hon'ble member stated :—

"It is anticipated that by the transfer of the adjudication of rent suits to the Civil Courts, the work will be more expeditiously and efficiently performed than it is at present. The experience of the last eight years has shown that the great majority of suits connected with rent are strictly civil suits, which were formerly triable only by the regular Civil Courts. It is considered that they will be better dealt with by a class of officers who have to undergo a preparation and examination for judicial work, and who, from their official habit and experience, are more competent to discharge the duty than officers of the executive department, who have had no such training."

After that, he (Baboo Ramanath Tagore) would not trouble the Council with any further remarks of his own. He would simply ask whether it would be just towards the people to allow the Collectors to conduct judicial investigations, which, according to the statement he had just read, they were not compe-

tent to do. He would therefore move that the following words be added to the Section :—

"Provided also that nothing herein contained shall debar a person who may deem himself aggrieved by any certificate under this Act, from contesting his liability, in respect of demands other than arrears of revenue mentioned in such certificate, in any Civil Court"

BABOO PEARY CHAND MITTRA said, he could not conceal from the Council his apprehension that some of the provisions of the Bill were likely to do more evil than good, and he looked upon the amendment proposed as the *safety valve*. By Act XI of 1859, an option had been given to the aggrieved party to contest his claim in the Civil Court. That provision was entirely omitted from this Act, and the amendment just proposed merely supplied that provision, which appeared to be a proper and just one. According to the English practice, certain descriptions of Crown demands were enforced by the appointment of Commissioners, who, after due enquiry, made a return, when the claim was enforced. In the present case a Collector merely filed a statement which would have the force and effect of a decree. Under that certificate the whole property of the defaulter situated within the jurisdiction of the Collector was under seizure. It thus appeared that, according to Act XI of 1859 and the English practice, the Bill was quite different without the amendment just proposed; and it would be necessary to go a little further and see what the effect of the Bill would be if the amendment was not adopted. It was already well known to several of the hon'ble members of the Council that the establishment in every Collectorate was inadequate to the performance of the duties. There was the Moonshee Dufter, or Correspondence Department: there was the Khajana Dufter, or Treasury; the Hissab Dufter, and the Khas Mehal Dufter and Nazree Dufter. It was an Amlah connected with the Hissab Dufter, drawing 25 or 30 Rs. a month, who generally submitted to the Collector a list of defaulting proprietors; and he was the *de facto* Collector so far as the enforcement of claims was concerned. Neither the Collector nor the Sheristadar had time to check the return. Could it therefore be wondered at that mistakes should be made, even supposing that the Amlah were not open to corruption? He (Baboo Peary Chand Mittra) would appeal to the mercantile Members of the Council, if, in the preparation of accounts current, and account sales, mistakes were not often found. He therefore submitted that in the interests of justice it was absolutely necessary that the aggrieved party should have the opportunity, especially when such summary powers were given to the Collector, when the machinery was so imperfect, and when some of the demands involved such important issues of fact and law, to contest by a regular suit the claims made against him.

MR. HOGG said, he concurred with the hon'ble members who had spoken. He thought that the provision would occasionally work individual hardship. The class of cases which would most frequently occur under the Section was the defalcation of the accountants and treasurers of Collectors. Suppose a Collector called on his accountant and found a defalcation of Rs. 1,000. As the Collector was necessarily directly interested in having his accounts correct, he (Mr. Hogg) thought that in such cases the Collector was hardly the proper person to give a judicial decision, that was to say, that the amount was really due; and he thought that a summary power should not be given to the Collector, who was in fact the plaintiff, unless the public accountant against whom the certificate of default had been issued, had the power of contesting his liability by a civil action. Suppose, again, the accountant was under the Commissioner. According to this Bill, the Commissioner would issue a certificate, on which the Collector, who was his subordinate, would have to adjudicate. If the accountant was not satisfied with the decision of the Collector, he would have to appeal to the Commissioner, who had himself deposited the certificate in the Collector's Court. He (Mr. Hogg) had always considered the present law (Act XII. of 1850)

very severe. However, even by that law, a public servant whose property had been sold in a summary manner, had an opportunity of redress in the Civil Court. And he was of opinion that the wording of the Section now under consideration should be modified, so as to allow a person against whom a certificate had been issued, to contest his liability in the Civil Court, which he could not do if the certificate was to have, as proposed in the Bill, the force of a decree of the Civil Court.

On those grounds, he (Mr. Hogg) would support the amendment.

MR. THOMPSON said, if the proposed amendment, which was founded on the supposition that Collectors should not have any judicial powers whatever, was carried out, he was afraid that there would not be any business left for the Collectors to do. They had always performed the duties connected with sales for arrears of land revenue, and it seemed only right that the investigations of incidental enquiries connected with that law should devolve upon them.

He would, however, ask the hon'ble member who proposed the amendment what there was in the present Bill, or in Act XI. of 1859, to prevent a person from bringing a regular suit to contest his liability under the certificate of the Collector?

THE ADVOCATE GENERAL said, the question just put disposed of the possibility of entertaining the amendment before the Council. Then the objection might be taken, that in any shape in which the amendment might be proposed, it had nothing to do with the subject before the Council. The Section now under consideration proposed to give an appeal from the decision of the Collector, where he was in fact dealing with what the Court would deal; for instance, where the person had sued the claimant. The Collector in all other respects was substantially, as regards the defaulter, the same as any other Court; and he (the Advocate General) could not conceive what distinction should be made with regard to that part of his functions from any other. The effect of the certificate would not be finally or conclusively to take away a man's property from him, if it was to be sold for a demand not leviable at all. It was quite unnecessary to say that nothing should take away the remedies, which, except in the case of the most stringent provision of law to the contrary, a person must have. On the other hand, it would be introducing much greater uncertainty as to the effect of the decision of a Collector in cases regarding the recovery of demands under this Act and under the law which related to the recovery of arrears of revenue. If it was said that the present Bill made a difference, he (the Advocate General) said that it did, and for a very good reason. The reason why he separated the determination of what under Act VIII of 1859 might be called claims, and had not provided that the unsuccessful claimant might contest his demand in a regular suit, was this. He was confident from what he had seen, that there was this great distinction between cases of default for arrears of revenue and other demands, that in cases of arrears of demands an attempt was made to conceal any property which either the defaulter or his sureties might have. He denied that there would be any substantial difference as regards the safety of the principal or his sureties; but if there was, it was founded on the necessity imposed on account of the frauds which were committed in cases of this kind.

MR. DAMPIER said, it had certainly appeared clear to him, and he had consulted the learned Advocate General on the point, that the object of the amendment was met without it. That there was in fact a sufficient civil remedy against the Collector for wrongs done by issuing a certificate declaring an amount of demand to be due, which could subsequently be shown not to have been due. He was surprised at being told just now by the hon'ble gentleman on his left (Mr. Hogg), of the case of a jailor from whom money was recovered as being due to Government; that the jailor brought a suit on

the ground that the account was not correct; and that the Civil Court held that the Collector could do as he liked, and that the Court had no power to interfere. The sense of the Council, however, appeared to be that there was no necessity for the proposed amendment, in order to secure its object; and therefore, although thoroughly agreeing in the necessity of a civil remedy being left to the defaulter, he should vote against the amendment as unnecessary.

The Council then divided:—

Ayes 5.	*Noes* 7.
Koomar Satyanund Ghosal.	Mr. Sutherland.
Baboo Peary Chund Mittra.	Mr. Alcock.
Baboo Ramanath Tagore.	Mr. Knowles.
Koomar Harendra Krishna.	Mr. Thompson.
Mr. Hogg.	Mr. Dampier.
	The Advocate General.
	The President.

The motion was therefore negatived, and Section 22 was passed as it stood.

Section 23 was passed after a verbal amendment.

Sections 24 and 25 were agreed to.

Sections 26 and 27 were passed after verbal amendments.

The consideration of Section 28, regarding the registry of tenures sold, was postponed.

Section 29 was agreed to, and Section 30 was passed after a verbal amendment.

Schedules A to D were agreed to.

The further consideration of the Bill was postponed.

The Council was adjourned to Saturday, the 4th of July.

Mr. Dampier.

Saturday, 4th July, 1868.

PRESENT:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate General,*
H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
Koomar Harendra Krishna, Rai Bahadoor,
Baboo Ramanath Tagore.
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

POLICE AND CONSERVANCY OF TOWNS.

MR. DAMPIER said, at the last Meeting of the Council he had mentioned that there were certain clerical errors in Schedules B. and C. annexed to the District Towns Bill, which would be corrected in the course of the week and copies of revised Schedules placed in the hands of hon'ble members. He perceived that there was a notice that he should move formally that the revised numbers of Sections be substituted for the numbers which had been erroneously inserted. It seemed unnecessary, however, that he should move that the Bill be further considered in Committee for the purpose of making the necessary corrections in those two Schedules; but he would simply move that the Bill be passed, Schedules B. and C. being amended according to the amended copies circulated during the week.

The motion was agreed to, and the Bill passed.

RECOVERY OF ARREARS OF REVENUE AND PUBLIC DEMANDS.

THE ADVOCATE GENERAL moved that the Report of the Select Committee on the Bill "to make further provision for the recovery of arrears of Land Revenue and of public demands recoverable as arrears of Land Revenue," be further considered in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

THE ADVOCATE GENERAL moved the introduction of the following Section after Section 4 :—

"It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the *Calcutta Gazette*, to empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors or persons liable to any demand, before proceeding under the provisions of the said Act XI of 1859 or of this Act to realize from such proprietors or persons any arrears of revenue or any demand which may be due from such proprietors or persons, and the costs of serving any such notices as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue or to any demand which may be due from such proprietors or persons, and shall be recoverable as if the same were a portion of such arrears of revenue or of such demand; and every such order may from time to time be altered, varied, or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published."

He might be allowed to explain the general object of the Section. The Section, which was at the last Meeting proposed to have been inserted as Section 4*a*, empowered the Collector in rather general terms, instead of serving the notices within the time and in the manner provided by the Act, to serve notices at other times. The reason for the proposal to introduce that Section arose from a representation from the Commissioner of Cuttack to the effect that, as regards certain classes of demands, there had been for a number of years a system, without legal sanction, by which, to suit the convenience of the parties and of the Government, notices were served at other times than according to the regular provisions of Act XI of 1859, that was to say, with reference to the last date of yearly payment, where payments were made not yearly, but quarterly or otherwise. The object was to enable the Collector to adopt the existing system. In the form in which that Section had originally been framed, it might have been read by some Collectors as giving them a sort of general power to dispense with the provisions of the Act with regard to sales. What he now proposed to substitute for the Section which he had then prepared, was a Section giving the Lieutenant-Governor power from time to time by order to enable the Collector of any district to dispense with conforming to the regular provisions of the Act with regard to notices, and to serve such notices and in such manner as he thought fit; and also that the costs of serving such notices at such rate as should be laid down by Government, either with regard to the particular case or particular class of cases, should be recovered as arrears of revenue. Probably the Government would adopt the scale of costs for the serving of processes laid down by Act V of 1863 of this Council.

BABOO RAMANATH TAGORE said, if we left the serving of notices to the Government, there would be no fixed principle observed. One Governor would hold a certain mode of service sufficient; another, thinking that objectionable, would direct another mode of service, and there would be great inconvenience to the landholders and the public. The course proposed would have the effect of surrendering the functions of the Legislature to the Executive Government.

BABOO PEARY CHAND MITTRA said, he did not clearly comprehend the object of the additional Section proposed. If it was intended to supersede Section 4, then they were introducing a different system of serving notices from that already settled. Was the additional Section to supersede Section 4? was the Government to give directions under it with reference to certain districts? or was Section 4 to apply to all districts generally? Whether the proposed measure was to be of special application for certain districts only, or whether it was to be of general application and supersede Section 4, was what he would wish to understand.

MR. DAMPIER said, he thought the hon'ble member should understand the object of the new Section, which

was not to supersede Section 4, but to follow it. The notices in that Section must be served under any circumstances; but the new Section was intended to meet the case of Orissa and other places where they had a custom of issuing *dustucks*. Before issuing the processes which were required by law to precede a sale, the Collector sent a peadah with a sort of notice that it was time to pay the revenue; and many Revenue Officers of Orissa had said that it would be a terrible calamity when this system of *dustucks*, which was not now sanctioned by law, was discontinued. It was to suit such cases, and to enable the Government by order to authorize the system of issuing *dustucks*, that the present provision was proposed.

BABOO PEARY CHAND MITTRA said, it appeared to him that the Section should be restricted to the special cases which it was intended to meet, so as to take away the appearance of its being general. Section 4 was the general provision with regard to notices, and the proposed Section was special. If the object was to make it applicable to particular districts, it should be so worded as to show that it was not intended to be general.

THE ADVOCATE-GENERAL said, he was sorry that he could not make the object of the Section intelligible. It was, he thought, plain enough. Some hon'ble members seemed to forget that, in whatever shape the Section might be framed, it could only be applied to the cases to which it was applicable. In the majority of cases, where the revenue was payable yearly, the provisions of Section 4 would be applicable: in other cases it would be entirely unnecessary and inconvenient to apply the provisions of Section 4.

The Section was then agreed to.

The postponed Sections 8 and 9, with regard to the registration of under-tenures, having been read—

THE ADVOCATE-GENERAL said, he had endeavored, in substitution of these two Sections, to adapt the Sections of Act XI of 1859 to the case of under-tenures, by giving substantive Sections based on those, but modified with regard to the difference of the cases to be provided for. Further consideration and discussion had, however, brought him to the conclusion that, as at present advised, there was no possibility of giving the power of registration, except on the condition that in the application should be given a list of all the intermediate holders between the applicant and the proprietor of the estate. Now, it was at least questionable whether the imposition of that necessary condition would not render a system of registration of under-tenures practically inoperative. But, be that as it might, all that he proposed now was to move that these two Sections should be omitted. As the question of registration was a question of protection not hitherto given, and if given in any subsequent law, was a question which might be considered as a fit subject of legislation in a separate enactment, at present the only course he could ask the Council to follow was to omit these Sections.

The motion was agreed to.

THE ADVOCATE-GENERAL then moved the omission of the 3rd Clause of Section 12, which provided as follows:—

"Tenures or farms created since the time of the perpetual settlement, when such tenures or farms have been duly registered under the provisions of this Act."

In doing so, he stated that at the next meeting he should propose a clause, the terms of which might be the subject of some little discussion, relating to tenures which, though created since the term of the permanent settlement, had been created or recognized on the establishment of such temporary settlements as had taken place in Orissa and elsewhere.

The motion was agreed to.

THE ADVOCATE GENERAL moved that Section 19, with a verbal alteration, be transposed, so as to stand after Section 16. He said, he wished that Section to be inserted there, because Sections 15 and 16 had relation to Certifi-

cates given in respect of arrears of revenue proper, and he desired that with regard to those the Certificate of the Collector should still have the force and effect of a decree of Court. He proposed that, to meet what had since been represented as not objected to by the Government of Bengal, namely, a modification as regards the effect of a certificate for a demand other than revenue proper.

The motion was agreed to.

On the motion of MR. DAMPIER, verbal amendments were made in Section 16.

THE ADVOCATE GENERAL then said, having made a difference between arrears of revenue and demands, he proposed that the Certificate in respect of demands should not have the force and effect of a decree of a Civil Court, except as regards the mode in which it was to be carried into execution. It should not have the force and effect of a decree in the sense that it should be treated as a judicial decision which could only be modified when it came before the Courts in any shape in which a decision could be altered or reversed on appeal. He would, therefore, move the introduction of the following Section after Section 18 :—

"Every such Certificate made in pursuance of the last two preceding Sections shall, as regards the remedies for enforcing the same and subject to the provisions hereinafter contained, have the force and effect of a decree of a Civil Court, and the Government shall be deemed to be the plaintiff, and the person named as debtor therein shall be deemed to be the defendant."

The Section was agreed to.

Section 28, which provided for the registration of tenures sold, was also omitted, on the motion of the Advocate General.

A verbal amendment was made in the heading of Schedule A: Schedule E. was agreed to, and so also were the preamble and title.

The Council was adjourned to Saturday, the 11th instant.

Saturday, 11th July, 1868.

PRESENT:

T. H. Cowie, Esq., *Advocate General,*

A. R. Thompson, Esq., S. S. Hogg, Esq., Koomar Harendra Krishna, Rai Bahadoor, Baboo Ramanath Tagore. H. Knowles, Esq., Baboo Peary Chand Mittra, T. Alcock, Esq., H. H. Sutherland, Esq., and Koomar Satyanund Ghosal.

RECOVERY OF ARREARS OF REVENUE AND PUBLIC DEMANDS.

MR. THOMPSON moved that the Bill "to make further provision for the recovery of Arrears of Land Revenue and Public Demands recoverable as Arrears of Land Revenue," be further considered.

The motion was agreed to.

MR. THOMPSON said, it would be in the recollection of the Council, that on the last occasion the Bill was so far passed, that there only remained for discussion and consideration a clause in substitution of Clause 3 of Section 12, which had been left out. That Clause, as the Bill then stood, ran as follows :—

"Tenures or farms created since the time of the Perpetual Settlement, when such tenures or farms have been duly registered under the provisions of this Act."

The Council would remember that at the last meeting the Registration Clauses contained in the Bill had been struck out, at the suggestion and for the reasons fully explained by the learned Advocate General, and of course therefore, with the extinction of the Clauses which referred to registration, the 3rd Clause of Section 12 fell with it. It was considered advisable, however, that some kind of provision should be introduced in the Act having reference to the tenures which had been alluded to in a part of the correspondence contained in the annexures to the Bill, and it had devolved upon him to submit the proposal in connection with that subject. The object of the Section of

which notice had been given was to protect from the effects of a sale for arrears of revenue certain classes of under-tenures. By the 1st Clause of Section 12, tenures which had been held at a fixed rent from the time of the permanent settlement, and by the 2nd Clause tenures existing at the time of the permanent settlement which had not been held at a fixed rent, were protected. But it had been suggested in the correspondence to which he had referred, that there was a class of tenures existing, especially in Cuttack, which, *though they did not date from the time of the permanent settlement*, ought to be secured against the effects of a sale. In para. 19 of his letter, the Commissioner of Cuttack referred to these tenures in the following words:—

"There are a multitude of tenures in this division not dating from a permanent settlement, but held at a fixed rent, *e. g.*, Thani Ryots' holdings. These would not be protected by the Section as it stands. These tenures were all recorded at the settlement, and it would probably be sufficient to substitute in line 13 of Section XII the words 'settlement and tenure which have been recorded as hereditary and transferable in the settlement proceedings,' for the word 'settlement.'"

It was, however, thought preferable to introduce a substantive Clause to meet the case, and in that view he had to propose that the following Clause should stand as Clause 3 of Section 12:—

"Tenures created or recognized by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement."

The object of that Clause was to secure, from the effects of a sale of a tenure, under-tenures which were created or recognized at the time of the existing settlement; so that when a sale took place of a tenure, such under-tenures should not be liable to be voided. A record was made at the time of the settlement of tenures held to be hereditary and transferable; and the proposed Section, if adopted, would give to the holder a title by law which was now recognized by custom and local usage. The Clause which he (Mr. Thompson) moved, differed slightly in form from the Clause which he had previously drawn up.

BABOO PEARY CHAND MITTRA said, he thought the object of the amendment was good, inasmuch as the amendment covered a number of tenures existing in different parts of the country, which were not protected by the Bill as it stood. The hon'ble member quoted the opinion of the Commissioner of Cuttack, that there were a multitude of tenures in that division not dating from a permanent settlement, but held at a fixed rent, such as Thani Ryots' holdings; and he (Baboo Peary Chand Mittra) had no doubt there were other tenures of a similar nature which would be covered by the amendment proposed. He therefore thought the amendment ought to be carried.

The motion was agreed to.

On the motion of MR. THOMPSON, a verbal amendment was made in Schedule C.

BABOO PEARY CHAND MITTRA said, with reference to the 17th and 20th Sections of the Bill, which he confessed he had succeeded in understanding after some difficulty, he submitted that they were not clear enough, so far as to enable any person not a professional lawyer to perceive that an appeal could be had from the decision of the Revenue Authorities in cases other than certificates for arrears of revenue. The object of Section 20 he now found to be, that so far as the execution of decrees was concerned, the Collector's certificate would have the force and effect of a judicial decree, but that the decree might be contested in a Civil Court on its merits; and that this Act being supplemental to Act XI of 1859, the provisions of that Act must apply to it. He would therefore merely submit that it would be better if Section 20 could be made a little more clear; because when the Act was translated into the native language, there

was nothing in the wording which would enable one to understand that under that Section the aggrieved party could appeal to the Civil Court, which he (Baboo Peary Chand Mittra) understood the hon'ble mover wished to allow by the Bill. He therefore submitted whether some alteration should not be made by which the meaning of the two Sections to which he had referred might be rendered clearer.

THE PRESIDENT having enquired if the hon'ble member had an amendment to propose—

BABOO PEARY CHAND MITTRA said, the only amendment he could propose was the amendment moved by the hon'ble member on his right (Baboo Ramanath Tagore) on a previous occasion. If a Section to that effect were added to the Bill, it would place the whole matter beyond doubt. He would therefore move the introduction of the following Section after Section 20 :—

"Nothing herein contained shall debar a person, who may deem himself aggrieved by any certificate other than a certificate for arrears of revenue under this Act, from contesting his liability in any Civil Court."

MR. THOMPSON said, he would put it to the President of the Council whether the hon'ble member was in order in making this motion; because the Council had already discussed the propriety of the Section proposed, and a full Council had determined that the Section should not be introduced. Was it competent for the hon'ble member now, on a subsequent consideration of the Bill, to bring forward, in a similar form, an amendment that had already been negatived, and the object of which had been clearly met by the amendments introduced on the last occasion?

THE PRESIDENT said, he must rule that the specific amendment proposed having been before rejected by the majority of the Council, could not be brought forward again; but an amendment to the same effect in any other form might be moved.

BABOO PEARY CHAND MITTRA then moved the insertion of the words "and so far only" after the word "contained" in the 6th line of Section 20, with the view that the certificate might have the effect of a decree as far as its *execution* was concerned, but might be contested on its merits in a Civil Court.

The motion was agreed to.

On the motion of MR. THOMPSON, the Bill was then passed.

The Council was adjourned *sine die.*

Saturday, 14th November, 1868.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
and
Koomar Satyanund Ghosal.

SUBURBS OF CALCUTTA.

(Repeal of Act XXI. of 1857.)

MR. DAMPIER said, the first measure which he had the honor to introduce was a particularly uninteresting one: it related to the Suburbs of the Town of Calcutta, situated within the 24-Pergunnahs. In 1857 an Act was passed, which began by declaring that special enactments had been passed for regulating the Police and Conservancy of the Town of Calcutta and of the other Presidency Towns, and that whereas large portions of the Suburbs of Calcutta and of Howrah were no less populous than parts of Calcutta, it was considered desirable to make special provision for the Conservancy and Police of the Suburbs and of Howrah; and the Suburbs of Calcutta were therein defined. In the course of things, in 1864, the District Municipal Improvement Act was passed;

and by one of its clauses so much of the Act of 1857 as related to Conservancy matters, was superseded within the limits of the Suburban Municipality. Thus, as the Municipal jurisdiction was at first extended to the whole of the Suburbs as defined in the Act of 1857, the Conservancy clauses of Act XXI. of 1857, so far as they affected the Suburbs of Calcutta, disappeared.

Then, in 1866, it was thought expedient to remove the Suburbs from the general Police of Bengal, and to place it, by special legislation, under the Officers of the Calcutta Police; and in providing for that, Act II. of 1866 of this Council enacted that the Act of 1857 should cease to have effect in that part of the Suburbs into which the Act of 1866 should be introduced. In making the enquiries which were found necessary in order to place the Suburbs under the Calcutta Police, it was found that a considerable tract, included in the Suburbs as defined in the Act of 1857, was really not in a condition to require those special urban arrangements, the lands included in that tract consisting of paddy fields and uncultivated land occupied by the agricultural classes. Therefore, the Notification which gave the Calcutta Police jurisdiction in the Suburbs, excluded a certain tract to the North-east of the Suburbs as defined in the Act of 1857, and also a tract to the South-east. Roughly speaking, the first tract was about two miles long by one in breadth, and the other was about half its size.

The Municipality followed suit. They also agreed that the above-mentioned tracts should be excluded from the limits of their jurisdiction. So that the present state of things was that there was a Municipality in the Suburbs whose jurisdiction was conterminous with that of the Commissioner of Police for Calcutta; surrounding that, roughly speaking, was a tract known as the Extra-Suburban Union under the Chowkeedaree Act of 1856; but there were those two isolated tracts, not more than three miles square, in which the special Act of 1857 remained in force. This was obviously undesirable, and therefore this Act was introduced to repeal Act XXI. of 1857 in so far as it related to the Suburbs.

The motion was agreed to.

MR. DAMPIER said, this Bill being one of the simplest nature, he would apply to the President to suspend the Rules for the conduct of business, to enable him to move that the Bill be passed through its subsequent stages.

The PRESIDENT having declared the Rules suspended—

MR. DAMPIER moved that the Bill be read in Council.

The motion was agreed to.

On the motion of Mr. Dampier, the clauses of the Bill were then settled.

TRANSFER OF CIVIL COURT NATIVE MINISTERIAL OFFICERS.

MR. THOMPSON postponed the motion, which stood in the List of Business, for leave to bring in a Bill to empower the High Court of Fort William in Bengal to transfer Native Ministerial Officers from one Civil Court to another.

EVIDENCE OF PRISONERS IN CIVIL AND CRIMINAL CASES.

MR. THOMPSON moved for leave to bring in a Bill to provide facilities for obtaining the evidence in Civil and Criminal cases of prisoners detained in any Jail or Prison. He said, it would be seen from the Statement of Objects and Reasons which accompanied the Bill that, until very recently, no rules existed by which the evidence of prisoners detained as convicts or in a Civil Jail could be made use of in any case in a Civil or Criminal Court. It might seem extraordinary that no definite rules should exist on the subject, and their non-existence could scarcely be attributed to the absence of any necessity for such rules, because, in his own experience, he had often found it essential in cases before him to obtain the evidence of prisoners confined in Jail, and he had received

occasionally applications from the Courts subordinate to him, where the same request was made.

The Council would be aware that no subpoena can have effect upon a person under custody, and accordingly the practice had been, though irregular, that where the evidence of a prisoner was indispensable, the Court made an application to the Magistrate or other Officer in charge of the Jail in which the prisoner was confined, requesting that the prisoner might be sent to the Court for examination. If the Magistrate complied with the request, it was well and good: the prisoner was brought into Court, where his evidence was taken; or a Commission had been issued, he was examined according to the interrogatories received. But this all depended on the good-will of the Magistrate or Officer in charge of the Jail, who might refuse to allow the prisoner to be taken to Court for the purpose of his examination, or to be examined in Jail by a Commission; and cases had arisen in which such refusals had been made. He (Mr. Thompson) had no doubt that the existing difficulties in the matter had often deterred parties from availing themselves of the evidence of prisoners detained in Jail, and the Courts too had been reluctant in making such applications in the absence of any rules for their guidance in such cases, and because it entirely depended on the favor and indulgence of the Officer in charge of the Jail whether the application would be complied with or refused.

In his (Mr. Thompson's) search for any rules on the subject, the only one he had been able to find was one dated so far back as the year 1840, when a Circular Order was issued by the North-Western Provinces Court, in which it was laid down that the Court requiring the attendance of a prisoner for the purpose of taking his evidence in any case should make a request to the Magistrate and report the circumstance to the Nizamut Adawlut. The days of the Nizamut Adawlut had, however, passed, and the control of Jails was now under the charge of a special Department, which was naturally unwilling that the dimission of prisoners to distant stations and Courts should be at the indiscriminate option of any one requiring their attendance; and on every ground it was desirable that their transfer, when indispensable, should be regulated by definite rules. The abuse of the practice had led, he believed, to an order from Government that, except under special circumstances, to be reported to Government, no prisoner should be allowed outside the walls of a Jail. In many cases, therefore, serious detriment had been caused by the inability to obtain the evidence of a witness confined in Jail.

Under these circumstances, and in consequence of the case which had lately arisen, provisional Rules on the subject had been drawn up by the High Court, and sanctioned by Government for the guidance of those who desired to have the evidence of a prisoner confined in Jail. Those Rules had temporary force; but to give proper effect to them an Act of the Legislature was necessary. The present Bill had, therefore, been prepared in general accordance with the Rules drawn up by the High Court, and provided facilities for obtaining the evidence of Civil and Criminal prisoners where such evidence was necessary to further the ends of justice. If permission was given to introduce this Bill, the draft of it could at once be placed in the hands of the Members of Council.

The motion was agreed to.

REGULATION OF CERTAIN TENURES IN CHOTA NAGPORE.

MR. DAMPIER said, he would now ask the permission of the Council to the introduction of a Bill, which, he thought, would commend itself more to the interest of hon'ble members than the last Bill which he had the honor to bring forward, and which, indeed, had been the subject of considerable public discussion already. It was a Bill to ascertain, record, and regulate certain tenures in Chota Nagpore.

It would be necessary for him to recapitulate the events which had led to the necessity for the introduction of this Bill. He found a letter on the subject from Dr. Davidson, the Principal Assistant to the Agent to the Governor-General, in 1839, which went to the foundation of what he (Mr. Dampier) had to say. It appeared that in the villages of Chota Nagpore the tenures might be roughly classed into three kinds. He would read Dr. Davidson's definitions to the Council:—

"Rajhahas, or land paying rent to the owner or his representatives.

"Majhahas, or ground allotted to the landlord or his theekadars, which is cultivated chiefly by the ryots in return for their Beth-khetá and Bhúinhari. This is subject to great abuse, and requires regulation, to be hereafter described.

"Land held rent-free by the original clearers of the soil or their descendants; it is called Bhúinhari, Byballa, Arecuot, Khoot-kutty, in different parts of the country. The holders of this land in general pay no rent, but are bound to accompany the landholders or their theekadars on journeys carrying their banghies, and to cultivate their Majhahas ground, also thatch and build their house, &c., without payment. In some parts of the country this description of land pays a rent, but never more than half the rate of the village; in general, however, it does not pay rent."

Dr. Davidson described some other kinds of tenures, but, for the purposes of the present Bill, they would be considered as subordinate to the Bhúinhari and Majhahas tenures. With the first of the three classes, the Rajhahas or ordinary rent-paying land, the Bill had no special connection. The object of it was to define, demarcate, and record the Majhahas lands of the zemindar, and the Bhúinhari land belonging to the villagers and claimed by them as representatives of the original founders of the villages and clearers of the soil. It would be convenient here to read the description given by Dr. Davidson of the four other classes of tenures which in this Bill it was proposed to include under the general denominations of Majhahas and Bhúinhari:—

"Beth-khetá, a certain portion of the Rajhahas which each ryot, not a Bhúinhari, is allowed to cultivate free of rent, and for which he performs various services to the landlord, or his representatives, such as thatching his house, cultivating the Majhahas, &c. The Beth-khetá allowed to each ryot is generally sufficient to sow from twenty seers to one maund of seed."

This appeared to be, in fact, land which originally belonged to the zemindar and was at his absolute disposal, and which he had of his own will assigned as wages for some of the labor which he employed on what might be called his home farm. It therefore might be classed under Majhahas.

The other tenures described by Dr. Davidson were—

"The Jagheers of the Muhto, Pahan, and Bhúinhari, which they have free of rent, on performance of certain services to be hereafter described.

"Beth-khetá, or rent-free land, the produce of which is appropriated for the performance of poojahs. Part of this, called Dáli-Katóri, is given up to the Pahan of the village, the rest is cultivated by the ryots, but the produce of the whole is appropriated to poojahs."

These were held by the occupants in virtue of certain services to be performed, but appeared never to have been at the absolute disposal of the zemindar. They might therefore, for the purposes of this Bill, be classed under Bhúinhari, and this would be done by an Interpretation Clause.

The principal object then was to demarcate the Bhúinhari lands, which were claimed by those who represented themselves to be the descendants or assigns of the first clearers of the soil; he said "assigns," because Colonel Dalton had informed him that some of those tenures had been transferred. The conditions on which those tenures were held were sometimes half rent and half service, and sometimes entirely service, and less frequently a low rent. According to Dr. Davidson, the service was explained to be generally twelve days' labor towards sowing, cutting, and reaping the crops, besides giving assistance in thatching and carrying loads when the zemindar travelled. Such were the acknowledged conditions and rights of the Bhúinhari. But from the earliest times the zemindars, and more especially the farmers and theekadars, had left no stone

unturned to transfer to themselves the profits derived from the Bhúinhari lands by gradually increasing the pressure of the conditions—whether money or service—on which they were held by the Bhúinhars, (and this had gone on to such an extent in 1839, that Dr. Davidson said that in some instances the zemindar and his farmers could plead custom in support of their exactions,) or by filching portions of land and annexing them to the class of lands which were at their own disposal—the Majhahas or Nijjote land. And one of the devices by which the proprietors frequently got possession of portions of Bhúinhari lands was by taking advantage of an acknowledged condition of the Bhúinhari tenures, which was, that not only if the Bhúinhar died without heirs his lands reverted to the zemindar, but that if the Bhúinhar and his family left the country, for so long as they were absent the lands reverted to the zemindar. Those were admitted conditions of the Bhúinhari tenure. But it was also admitted that when the Bhúinhar and his family came back to their village, the zemindar was bound to give back the land. This part of the condition the zemindar did not fulfil when they returned, and in order to drive the Bhúinhars out of the villages it was stated that false charges were instituted and every oppression resorted to. That was, of course, the cause of a very serious complaint, and Dr. Davidson attributed the disturbances of 1832 in a great measure to this oppression on the part of the proprietors and their representatives. Dr. Davidson then recommended that the cause of irritation should be remedied by some summary settlement of rights and claims between the Bhúinhars and zemindars. The proposed measure was, however, never carried into effect, probably because there was some fear that those enquiries would raise more disputes than they would settle.

The subject was opened up again in 1859 by the disturbances of that time, and then an element was introduced which had never before appeared, and which he (Mr. Dampier) should prefer to describe in the words of Colonel Dalton himself, who he thought put the case as fairly and honestly as it could be put. Colonel Dalton said—

"These disturbances no doubt originated first in the wrongful dispossession, by zemindars and theekadars or farmers, of the descendants of old proprietary cultivators from lands which had been held in their family rent-free for generations, in virtue of their ancestors having been the original clearers. Such tenures, called Bhoocharry, are to be found in most of the Chota Nagpore villages, and the zemindars or farmers have for years availed themselves of every opportunity of assessing them or of ousting the old proprietors.

"It has been commonly remarked that, when matters came to issue between the 'simple Kol' and zemindar or the foreign farmer, the Kol had no chance, and indeed he appeared to think so himself, for he seldom sought redress; but the Kols who embraced Christianity imbibed more independent notions, and in several instances successfully asserted their rights. From this the belief unfortunately spread through the district that when Kols go to Court as Christians, they are more uniformly successful than those who have not changed their religion. Mainly, in consequence of this impression, they suffered much persecution from their landlords during the absence of the authorities after the mutiny, and were almost all plundered. On the restoration of order, they obtained, through the Relief Fund, a considerable sum to meet their pressing necessities, and this was considered as another clear indication of their being a class highly favored by the authorities.

"The result of this has been a great accession of strength to the ranks of nominal Christians. A reasonable desire to be reinstated in Bhoocharry lands actuated some, a dishonest wish to become one of this favored family of Bhoochars seized others. The next step was to profess Christianity; and going up to Ranchee to the Mission, they returned with their hair puritanically cropped, and ready to assert their rights and defy their landlords.

"Right or wrong, the demands that were made by the latter were resolutely opposed. Affrays took place, and blood was shed; and, considering the acts of the nominal Christians, who took advantage of these disturbances to seize lands to which they had no right, and to extort from zemindars and farmers what they called compensation for the property they alleged had been taken from them during our absence, it is surprising that disturbances of a more serious nature did not break out: but doubtless the zemindars dreaded compromising themselves with the authorities."

And in continuation of that it was only right to read one short paragraph

of Colonel Davies' report, in which it is said—

"Of the parties concerned in these proceedings, I have had a number before me, and regret to say many stated openly that their object in becoming Christians was to regain their lands, &c. In justice to the true converts, I must say these are invariably men who are not recognized as Christians by the Missionaries, and really know nothing of the true faith, but they imagine they have become so, because they have been a few times to the Mission and have cut their hair off; but it is to be the more regretted since it gives a coloring to the complaints brought by the zemindars against the Christians as a body, for these men have undoubtedly been guilty of taking the law into their own hands, instead of preferring their claims through the ordinary Courts, but which in reality they have not the means of doing."

He (Mr. Dampier) thought the case might be fairly summed up by saying that up to about 1857 the zemindars and their representatives were entirely in the wrong, and that they in fact originated the cause of irritation; but that from 1857 and, he was afraid, up to the present time, both parties had been most grievously to blame. In 1859, again, the same remedy was proposed that had been suggested by Dr. Davidson, and at different times by every one who had been called on to consider the question—some easy and summary way of settling these disputed claims. An officer named Láll Lokenath Sahee was appointed to hold a summary enquiry in each village, and to record the rights to land of the Bhúinhars only. His decisions appeared to carry with them no sort of judicial authority, but the result had been that in the five hundred villages in which that officer carried on operations there had been no riot or disturbance from that time to this. If this was the ascertained effect of action of the executive authority very summarily carried out, and which carried no judicial weight, he (Mr. Dampier) thought that it might be expected that any more perfect measure in the same direction would be at least as successful. In 1862 Láll Lokenath Sahee died, and unfortunately his investigations were not carried on, partly, it was said, because the Indian Councils Act took away from the Executive Government the power of passing such summary orders in any Non-Regulation Provinces, and nothing had been done in the matter since 1862. So in a very large proportion of the villages—Colonel Davies incidentally mentions about 2,000, and Colonel Dalton in one place estimates that the work to be done was ten times as much as that which had been got through—no investigations had been made. The Bill was proposed for the purpose of doing more effectually, in the remaining villages, what Láll Lokenath Sahee had done in some, and also for remedying the defects of Láll Lokenath Sahee's work in those 500 villages.

He (Mr. Dampier) then came to the events that immediately led to the introduction of the present Bill. In September 1867, a petition was presented to Government signed by Noush, Eleazar, and others, and professing to emanate from 14,000 Kols professing Christianity. The petitioners said—

"That your petitioners, who are an increasing body of Native Christians, have from time immemorial peaceably held and enjoyed lands as ryots of the Rajah, when in the year one thousand eight hundred and sixty-three the said Rajah inaugurated a system of persecution against your petitioners by cutting down their crops, and dispossessing them of their ancestral holdings, rights, and privileges, thereby entailing on your petitioners considerable loss of moveable and immoveable property."

That petition was supported by the professional opinion of a legal gentleman in Calcutta, whose name he might mention, as it was well known, Gyanendro Mohun Tagore; and these documents were referred to Colonel Dalton for report. Colonel Dalton at once consulted Mr. Batsch, the Senior Missionary in the place, as being the pastor of those in whose name the petition was given. Mr. Batsch wrote in reference to that petition:—

"I have the honor to state (1) not more than about twenty of our converts, all excluded from church fellowship, together with some Pagan Kols, are connected with the petition.

2. "Of the two whose names disgrace the petition, one Noas, of Nagra, has nothing whatever to do with it."

In fact, he disclaimed, on the part of his congregation of converts, the presenting of the petition; and then Colonel Dalton wrote as follows:—

"It contains replies to two of the questions I have to answer. Mr. Batsch says that not more than twenty of the converts are connected with the petition. The remainder, who have supported its presentation, are Pagan Kols. This may be true in regard to this particular petition, which has evidently been prepared by some person who could not understand, or did not trouble himself to make out, what the fomenters of the movement really complained of, but I know that a large number of Christians joined and aided the deputation that first proceeded to Calcutta, and they professed to be delegated to obtain a hearing on behalf of all the Kols, who have, or claim to have, certain proprietary rights in the soil as Bhúinhars. They never complained against the Rajah of Chota Nagpore. Their complaints of encroachments of their Bhúinhari rights have ever been against sub-proprietors—frequently *Brahmins* and farmers."

"It will be observed that neither Mr. Batsch nor the Deputy Commissioner of Lohardduggah consider that the encroachments complained of are directed by any spirit of animosity towards the petitioners, because they are converts to Christianity, but there is no doubt that for several years certain converts have taken a prominent lead in resisting such encroachments, or what they declared to be such, and have succeeded in exciting a combination on the subject, which, without them, might not have been attained. A spirit of antagonism has been aroused, and as encroachments continue, or are attempted or suspected, the claims of the Bhúinhars assume more portentous proportions."

And, as usual, Colonel Dalton went back to the old proposal of removing the cause of irritation by a prompt and summary means of deciding those claims. He (Mr Dampier) had no doubt from what had been seen of the results of Láll Lokenath Sahee's work, that the present Bill would do much good; but the Council must not expect that it would satisfy all the expectations of the Bhúinhars and their advisers. Those expectations had been raised most unfortunately to an absurd pitch; for nothing would probably now satisfy them but the consideration of every claim which was based on the traditions of the last seventy generations. Colonel Dalton wrote:—

"It is quite possible that, at the present time, the Bhúinhars object to or disregard any registration or investigation into their claims that did not take as the basis of the enquiry the traditions which they have recently been putting forth in their petitions to me and to Government. This would be utterly impracticable and absurd, but I think, to give any mode of satisfaction, it would be desirable that the Officer specially deputed should be circumscribed only by the provisions of Act XIV. of 1859, in regard to the limitations of the claims preferred."

It would, he (Mr. Dampier) thought, be enough in this place to say—and to this he supposed no one would demur—that there must be some limitation to the recognition of these claims. What that limitation ought to be would be considered when the Bill was before the Committee. He had only to add that the result of some specific cases and enquiries reported to Government shewed that, however much the Kols might be acting in good faith, they had attempted by violence, and even by applications to the Courts, to enforce claims which no reasonable law of limitation could possibly recognize. It was evident that no measures the Government could take could satisfy their demands to that extent.

With those remarks he would move for leave to bring in the Bill.

The motion was agreed to.

MR. DAMPIER then said, it was evident that it was of the most importance that executive measures should be taken immediately under the proposed law; he would therefore ask the President to suspend the Rules for the conduct of business, so far as was necessary to enable him to move that the Bill be read in Council.

THE PRESIDENT having declared the Rules suspended—

MR. DAMPIER moved that the Bill be read in Council. In doing so, he said he might mention that since the Bill had been printed, he had received a communication from Colonel Dalton on the subject of the Bill, of which he had sent a draft to Colonel Dalton. He had also received a paper on the subject from the Judicial Commissioner, containing suggestions and recom-

mendations. In one or two material points they had suggested alterations which he would mention below.

By the Bill it was proposed to bar the jurisdiction of the Regular Courts in regard to these tenures, and it was proposed to record two classes of tenures only, *viz.*, Majhahas and Bhúinhari, not regarding Rajhahas, which would comprise the greatest proportion of the tenures. Every tenure that was not recorded or decided to be either Majhahas or Bhúinhari, might be assumed to be Rajhahas, or ordinary rent-paying land. It was proposed that, in addition to the exceptional power given under the Bill, the Special Commissioner should exercise the powers of a Collector making a settlement under Regulation VII. of 1822. Awards of Settlement Officers under that Act could be, however, contested by civil suit within three years, but this Bill proposed to make the orders of the Special Commissioner appealable within three months to the Commissioner of the Division, and to allow no other appeal or process of any sort to modify the decision of the Special Commissioner.

Then there was the power of restoring possession to those who had been dispossessed. Some had proposed twenty years as the period within which possession might be recovered: twelve years stood in the Bill, but that would be a subject for consideration in Committee.

It would be seen that the 6th and 7th clauses of the Bill were in favor of the Bhúinhar, but it was found, in the course of the local investigations, that the Bhúinhars had taken possession, here and there, in the course of these disputes and disturbances, of the zemindar's Rajhahas lands, and had claimed them as Bhúinhari. The object was not to make the Bill one-sided; and it was, therefore, proposed to enable the Special Commissioner to hear all complaints regarding lands held under color of being Bhúinhari, and if found not to be Bhúinhari he would refuse to record them as such.

There was also another important suggestion in the papers which came in yesterday,—so important that he (Mr. Dampier) could not attempt to give any opinion on it at present. It was that the Special Commissioner should not only be empowered to define the amount of service, but also where the Bhúinhars were willing, that he should be empowered to commute such service to a money-rent. That suggestion was, he believed, made by Major Ousely in 1839, but Dr. Davidson rejected it at once, believing that the Bhúinhars would not hear of it. The proposal was again referred to in 1859, and dropped; and it was now again brought forward for consideration. It was said that probably the zemindars would object to such a measure, because it would take away from them the power of oppression and filching which the very vagueness of the conditions now left in their hands, and that it would probably be unpalateable to the Bhúinhars, generally speaking, because they clung to old customs, but that the Christian converts would be very glad to get rid of this means of oppression in the hands of the zemindars.

In the 13th and 15th clauses of the Bill as it stood, it was proposed that the Act should give a certain validity to Láll Lokenath Sahee's register. But the Local Officers had pointed out that the principles on which some of the Láll's conclusions were founded, had since been declared to be erroneous by the Civil Courts, and that in other respects the Láll's record was not such as would justify the Council in giving perfect validity to it.

BABOO PEARY CHAND MITTRA said, he was anxious that the bulk of the people who had suffered from exactions and oppression should have prompt justice done to them, and the present Bill, when modified and passed, would no doubt secure that object. But it was highly necessary that the provisions of the Bill should be made widely known to the people of Chota Nagpore: a mere Bengali translation would not achieve that object; and it was a matter for the consideration of the Select Committee whether there

should be a distinct provision to that effect in the Bill, or whether it should be left to the Government to make the provisions of the Bill widely known.

With regard to the Bill itself, when the papers connected with the Bill were printed, the Council would be in a position to judge whether only the tenures enumerated in the Bill should be protected, or whether there were other tenures that should also be protected, although he believed the hon'ble mover had taken every care to make the classification complete.

There was another point which required consideration. The 7th Section of the Bill provided that the Special Commissioner, in determining the rents and services to be rendered in respect of such land, should disregard any rents, services, and cesses which appear to have been exacted in respect of any land of Bhúinhari tenure within the term of twelve years before the passing of the Act. The question was, whether the men who had been made to pay increased rates or cesses and to give their labor, should not have compensation, which in point of justice and equity they were entitled to. That, he (Baboo Peary Chand Mittra) submitted, should be a question for the consideration of the Select Committee. And he was not sure whether there should not, also, be some provision for the punishment of persons who exacted labor to which they were not entitled by virtue of any law, custom, or agreement between the parties. That was another point worthy of consideration, because if such persons were allowed to go unpunished, it would amount to slavery, which had been prohibited throughout British India, and it was high time that stringent means should be adopted to put an end to such measures as compulsory labor being adopted in Chota Nagpore.

MR. DAMPIER said the hon'ble member had thrown out a few suggestions for the consideration of the Council. The first was that the Bill should be made known to those whom it concerned, and to that he (Mr. Dampier) cordially agreed. He thought the Government might be left to do that.

The hon'ble member had also enquired whether there were no other tenures which should be protected. The object of the Bill was to put a stop to the irritation which had occurred in regard to certain specific tenures. He (Mr Dampier) had before him a Preamble drawn up by Colonel Dalton, detailing the tenures to be included in the Bill. Similar details were given by Dr. Davidson in 1839, and, with one exception, he (Mr. Dampier) found that the two agreed with each other, and therefore he might conclude to accept Colonel Dalton's Preamble as including everything which required to be included.

The third matter to which the hon'ble member referred was compensation. It seemed to him (Mr. Dampier) that to provide in this Bill for compensation during the time a person might have been wrongfully dispossessed of his tenure would be to import something entirely foreign to the matter in hand. When the rights of parties were once investigated and defined by the Special Commissioner, those who had been kept out of possession would be able to go with a strong case to the Civil Courts for compensation.

Then, with regard to the hon'ble member's remarks as to providing a punishment for illegal exactions and for the enforcement of labor in excess of what was due, which amounted to slavery, he (Mr. Dampier) did not exactly understand whether the hon'ble member proposed to introduce a penal clause into this Bill; but he (Mr. Dampier) thought any such provision would be quite out of place in a Bill of this kind.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of Mr. Thompson, Baboo Peary Chand Mittra, and the mover, with instructions to report within a week.

The Council was adjourned to Saturday, the 28th instant.

Saturday, 28th November, 1868.

PRESENT:

The Hon'ble the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General*,
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.
A. R. Thompson, Esq.
S. S. Hogg, Esq.
H. Knowles, Esq.
Baboo Peary Chand Mittra.
T. Alcock, Esq.,
H. H. Sutherland, Esq.
Koomar Satyanund Ghosal,
and
Baboo Issur Chunder Ghosal.

NEW MEMBERS.

The Hon'ble Ashley Eden took the Oath of Allegiance, and the Oath that he would faithfully fulfil the duties of his office.

Baboo Issur Chunder Ghosal made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

SUBURBS OF CALCUTTA.

(Repeal of Act XXI. of 1857.)

MR. DAMPIER moved that the Bill to repeal Act XXI. of 1857, so far as it affects the Suburbs of the Town of Calcutta, be passed.

The motion was agreed to and the Bill passed.

TRANSFER OF CIVIL COURT NATIVE MINISTERIAL OFFICERS.

MR. THOMPSON, in postponing the motion, which stood in the List of Business, for leave to bring in a Bill to empower the High Court of Fort William in Bengal to transfer Native Ministerial Officers from one Civil Court to another, said that circumstances had arisen which necessitated further consideration before the introduction of the Bill.

REGULATION OF CERTAIN TENURES IN CHOTA NAGPORE.

MR. DAMPIER moved that the Report of the Select Committee on the Bill to ascertain, regulate, and record certain tenures in Chota Nagpore be taken into consideration, in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. Hon'ble members would see that considerable alterations had been made in the Bill in Committee. A new Preamble had been inserted: the Bill was in its nature so local, and must contain so many technical descriptions of tenures, that the Committee had thought it better to adopt the Preamble prepared by Colonel Dalton, in which the tenures were set out at length. As he (Mr. Dampier) had said when the Bill was introduced, there were three principal classes of land tenures in Chota Nagpore. Majhahas, which was land absolutely at the disposal of the Zemindars; Rajhahas, or ordinary rent-paying land; and Bhúinhárí, which was land held on a certain customary tenure, and the infringement of the rights of the holders which had led to the introduction of the Bill before the Council. There were also, as would be seen from the Preamble, several other minor tenures which the Committee had thrown into either Bhúinhárí or Majhahas, according to their nature, and which were included within one denomination or the other, for the purposes of the Bill, by the interpretation clause.

The Committee had introduced a Section, which stood as Section VI., giving power to the Special Commissioner to commute the services in consideration of the performance of which lands were held, to money payments on the request of the tenants of such lands and of the person from whom such lands were immediately held. Some discussion had taken place on this point in Committee, and the question had been recommended for the consideration of the Council. As the clause stood, no one would say it went too far; it merely enabled the parties, if they agreed to a commutation, to come to the Special Commissioner, who would act as an arbitrator and fix the proper money equivalent for the service. But the question was open whether the Section should go further and make commutation compulsory on either party if the other desired it.

In Section 7 the Committee had made an alteration in favor of the Zemindar. The provision as it stood in the Bill as referred to the Select Committee, was simply to enable the Bhúinhár to obtain possession of lands of which he had been wrongfully dispossessed; but in the correspondence which had been printed relating to the Bill, an account was given of the manner in which, for the last ten years at least, the Bhúinhárs had retaliated by taking possession of some tracts of Majhahas land which belonged to the Zemindars, and by holding possession of them under color of their being Bhúinhárí land. The 7th Section of the Bill as amended would enable the Zemindar to recover possession of his Majhahas, as well as the Bhúinhár to recover possession of his Bhúinhárí lands.

To the next Section of the Bill the Committee had added an important clause. As referred to the Committee, the Bill provided that the status before the period of twelve years from the passing of the Act was to be accepted as conclusive evidence for the purposes of the Act in determining the rents and sevices to be paid for the land. The Committee had now added to that twelve years' status and presumption a provision to the effect that that presumption might be rebutted by proof to the satisfaction of the Special Commissioner of what were the original terms of the tenure. Such attempts to trace out the original conditions of old tenures, instead of closing the door artificially by presumptions, had been so fully discussed and condemned as quixotic in the late discussions in another place, that it was due to the Council to explain why the Committee had thought themselves justified in departing from the principles which had been accepted in the debate on the Panjáb Tenancy Bill. The Hon'ble Mr. Maine, in the course of the debate on that Bill, had said :—

THE ADVOCATE GENERAL rose to order. He was not aware that reference to discussions taking place in the Council of the Governor-General was regular. Hon'ble members could refer to the printed Reports of the proceedings of this Council; but though there was no rule against it, he believed it was not regular to refer in this Council to debates in the Council of the Governor-General.

THE PRESIDENT said there was no rule on the subject, and he therefore could not pronounce the hon'ble member to be out of order in reading extracts from the Reports of the proceedings of the Council of the Governor-General; and he himself did not see that there could be any objection to any hon'ble member referring to the debates that had taken place in another Council on another Bill of a similar nature to the Bill under consideration. The debates of the Council of the Governor-General were avowedly published for general information; but any hon'ble member referring to those debates must be assumed to do so in a proper manner.

MR. DAMPIER said, he would then go on to justify what, unexplained, seemed like a deliberate rejection by the Committee of a principle which, they were told by high authority, "had been selected by jurists as the criterion for distinguishing good and civilized systems of law from those that are bad and barbarous."

The reason given by Mr. Maine for dwelling so strongly on the advantages of creating an artificial right, as against the attempt to trace out original rights, appears in the case then under discussion to have been the indefinite nature of the rights with which they had to deal, Mr. Maine said :—

"The accumulated common sense of ages has shown that, even in societies which have very distinct ideas as to property, enquiries into rights which are unfrequently and intermittently exercised, are, if carried back, as nearly as possible worthless."

In the present case, the rights with which the Council had to deal—the original and acknowledged rights which the Bhúinhár had—were not indefinite; there was no haziness about them.

The whole correspondence before the Council was to the effect that there was no difficulty in recognizing and tracing up the original terms of each tenure. However much the original conditions might have been raised, whether of service or of money; whatever oppression there might have been—there never was any difficulty in ascertaining what the true rights were. It was notorious what lands were Bhúinhárí in any village, and what were the original conditions of the Bhúinhárí tenure in that village. It seemed to run like a silver thread, which any one could at any moment trace up, if he *bonâ fide* wished to do so. That was the great difference between the tenures now in question and those which were under consideration in the discussion of the Panjáb Tenancy Bill; and this distinction justified the Committee in their recommendation to allow the Special Commissioner to look back to the original terms of the tenure. Twelve years were given, because that was the well recognized term of limitation adopted in such cases. There must have been some change within twelve years to give the Commissioner any sort of jurisdiction; if the rights and services connected with a tenure had undergone within that time no change, the jurisdiction was barred. The Bill as it stood did not pretend to put men back in possession of land from which they had been altogether disconnected for a generation or two; but where they had held on continuously to their lands, and had attempted to assert their rights whenever they could (as the correspondence showed to have been the case), the Bill empowered the Commissioner to replace the tenures on their original footing wherever he might be able to his satisfaction to ascertain the original terms and conditions. But where the original conditions of the tenures cannot be satisfactorily proved, the Special Commissioner must assert their status to have been what it was twelve years ago, and record them accordingly.

By the 11th and following Sections the Committee had given power, both to the Special Commissioner and to the Commissioner of the Division on appeal, to revise their own orders and decisions within one month from the date of the passing of such orders and decisions.

The 17th was a new Section, and provided that no Mukhtár or Vakíl should be heard without the permission of the Special Commissioner. He (Mr. Dampier) had no doubt that those who had any knowledge of tribes such as these would agree in the propriety of keeping out Mukhtárs as far as possible.

In the 19th Section the Committee had provided that, after all the decisions had become final, the Registers should be prepared, and should receive the formal sanction of the Commissioner of the Division; and on such sanction being published, the Register would become conclusive evidence of everything that was in it. The Committee were guided in that proposal by the procedure with regard to the Revenue Survey, the proceedings of which required the formal sanction of the Government before they became valid.

The motion was agreed to.

The consideration of Section 1 (the interpretation clause) was postponed.

Section 2 was agreed to.

Section 3 empowered the Special Commissioner to investigate and ascertain the titles to Bhúinhárí and Majhahas tenures.

BABOO ISSUR CHUNDER GHOSAL said, he observed in the Preamble of the Bill that Rajhahas tenures had been omitted; but both the Commissioner of Chota Nagpore, at whose request the Bill had been brought forward, and the Government of India, suggested that Rajhahas tenures should be included in the Bill. If the Council would refer to pp. 28 and 44 of the papers printed as annexures to the Bill, they would find the recommendation of the Commissioner of Chota Nagpore, as well as the views of the Government of India, as far as that class

of lands was concerned. In page 28, the Commissioner said—

"It appears desirable that in every village where these tenures (Bhúinhárí, Rajhahas, and Majhahas) exist, we should have an accurate demarcation of the three distinct classes of lands."

And the Government of India, in their Secretary's letter, dated 30th June, 1868, para. 2, (page 44) said—

"The proposed enquiry as to the necessity of demarcating not only the Bhúinhárí, but the Rajhahas and Majhahas lands also, may be instituted at once."

He (Baboo Issur Chunder Ghosal) therefore submitted that Rajhahas tenures should also be included in the Register, and inserted in the Preamble of the Bill.

MR DAMPIER said, the question of including Rajhahas tenures in the Bill had been thoroughly considered by Colonel Dalton and himself. If the Council were now to include Rajhahas tenures, the Special Commissioner would have to demarcate and record the *whole* of the lands in those parts of Chota Nagpore to which the Bill referred. After a good deal of consideration as to whether Bhúinhárí lands only, or Majhahas also, should be included in the Bill, Colonel Dalton agreed that it would be sufficient to deal with those two classes only in connection with which disputes had arisen, and these two classes bore a small proportion to the Rajhahas lands in the parts referred to.

BABOO PEARY CHAND MITTRA said, this question occurred to him when sitting in Committee, but he had since found that the objection had been met by what the Commissioner of Chota Nagpore said in his letter of the 17th August last:—

"In the Rajhahas lands the cultivators had generally obtained a right of occupancy. If the Majhahas and Bhúinhárí are demarcated, it is all that is necessary."

Thus it appeared that it was not necessary to include Rajhahas lands; the tenures which had been included in the Bill would be sufficient for all purposes of good government.

The Section was then agreed to.

Sections 4 and 5 were agreed to.

Section 6 provided for a commutation, by consent of parties, of services to a money payment

THE PRESIDENT thought the consideration of the Section should be postponed. He was inclined to think that there ought to be a provision that the Bhúinhár should, on his own application only, without the consent of his Zemindar, be permitted to commute his labor services to a payment of rent. It seemed to him (the President) that a provision to pay rent partly, and labor partly, was one which could only exist under conditions where the cultivator was unable to pay in money; and even where the condition of the country was so, it would be to the advantage of the proprietor to receive payment in money. The President did not propose any amendment at present, but he should be glad to let the Section stand over.

BABOO ISSUR CHUNDER GHOSAL said, he would propose that the power to commute labor services to money payments should be made absolute. If the Council would look at the printed papers, they would find that the misunderstanding between the ryots and their landlords on the question of labor services is not of recent origin. He would refer the Council to paras. 16 and 17 in page 8, and para. 15 in page 10, and to paras. 24-29 in pages 50 and 51 of the annexure, from a perusal of which he had himself come to the conclusion that it was time that this festering sore was healed at once through legislative action.

THE ADVOCATE GENERAL thought the question before the Council was whether the consideration of Section 6 should be postponed, and the hon'ble member, he thought, was not in order in speaking upon an amendment which he had in contemplation to bring forward at a future meeting.

THE PRESIDENT thought the hon'ble member was in order, because

the Council would be better prepared to consider the amendments which might be brought forward on this Section at the next meeting if they knew what was likely to be proposed. An hon'ble member might surely refer to the recorded views of the Officers of Government; but perhaps the hon'ble member would, between this and the next meeting, prepare a Section making money payments in commutation of labor services absolute.

BABOO ISSUR CHUNDER GHOSAL said, he would then propose by way of amendment, for the consideration of the Council at its next meeting, that the words "on the request of the tenant of such lands, and the person from whom such lands are immediately held," in lines 7, 8, and 9 be altogether omitted from this Section.

The consideration of the Section was then postponed.

Section 7 was agreed to.

Section 8 provided as follows:—

"It shall be presumed that all lands of Bhúinhárí tenure are rightly subject to the conditions, rents, and services, upon which such lands respectively are found to be held at the time of the enquiry made by the Special Commissioner, unless it be shown that at the commencement of the term of twelve years before the passing of this Act, such lands were held subject to and upon other and different conditions, rents, and services; in which case it shall be presumed that such lands are rightly subject to the conditions, rents, and services, upon which they were so held at the commencement of the said term of twelve years. Provided always that in case it may be shown to the satisfaction of the Special Commissioner that the original terms of the tenure were different from those upon and subject to which such lands may have been so held at the commencement of the said term of twelve years, the Special Commissioner shall determine the lands to be subject to the conditions, rents, and services which he shall find to have been the original terms of the tenure."

THE ADVOCATE-GENERAL said, the subject of the Bill before the Council was one with which he was not at all familiar; but as this Section proceeded on a question of general principle, it appeared to him that there was something illogical and inconsistent in the whole frame of the Section. There were three sorts of cases contemplated in the Section. First, the Commissioner was to make a presumption that the proper conditions of the rents and services appertaining to each tenure were those which he found existing at the time of making the investigation: that was presumption (A). Then, upon evidence that the conditions of the tenure which existed at the perfectly arbitrary period of twelve years were different, the Commissioner was to make a second presumption, that the proper conditions, rents, and services were those under which the tenure was held at the commencement of the arbitrary term of twelve years: that was presumption (B). And then the Commissioner might make a presumption, or rather conclusion (C) from the evidence before him, that the real conditions, rents, and services were those under which the tenure was orignally held. If as he (the Advocate-General) understood from the hon'ble member opposite (Mr. Dampier) there was practically, as regards the question of right, no difficulty whatever; if the origin and nature of these tenures was so very certain, and all that the Bill was practically dealing with were matters of practical investigation of admitted rights—he (the Advocate-General) apprehended the only stand-point was to consider what the original terms of these tenures were. And therefore he would move that the whole of this Section be omitted down to the 24th line, and that the Section should stand thus—

"The Special Commissioner shall determine the lands to be subject to the conditions, rents, and services which he shall find to have been the original terms of the tenures."

The introduction of twelve years, which after all would, as the Section stood, be only a contingent and presumptive mode of determining the nature of the tenure, was perfectly arbitrary. It was not a question of limitation in any way. The general scope of the Bill was that in the case of certain tenures, with regard to the conditions of which there was no doubt, but as to which in too many cases there had

been actual infringement of rights, we ought to go back to the original terms of the tenures. But, according to the present Section, the Commissioner was first to take the state of things as he found it at the time of the investigation; then, under certain circumstances, to take the condition of things as they were twelve years ago; and lastly, if he found it necessary, to go back to the original terms of the tenure. By limiting the Section, as it was proposed to do, we would not get over the question of the real conditions of the tenure; that was to say the Commissioner would eventually have to determine the original terms, as a question of evidence which would depend on each particular case. It could not be said that he was deciding on evidence if he said that the original terms were so and so because the existing terms were so. The twelve years' rule would be a perfect encumbrance in the way of the Commissioner, as it would be his duty to ascertain what were the original terms of each tenure. It appeared to him (the Advocate-General) that this matter should be dealt with, not in the interest of the proprietor or of the Bhúinhárs, but that the Commissioner should be directed as to the general principle on which he was to proceed, *viz.*, to find according to the evidence set before him. He thought it should be left as a question of evidence, untrammelled by any artificial legislative rules of presumption, than which nothing was more misleading.

MR. DAMPIER said, there was no doubt that the object in view was to get the original terms of the tenures determined as far as was practicable. When he said there was no doubt that the original terms of the tenures were clearly known, he laid that down as a general rule. But there might be certain cases in which the original terms could not be followed out, and in which there was no possibility of getting it proved that any given conditions were the original conditions of the tenure. The Commissioner might find that fifteen years ago there were certain conditions in force as to the tenure; twenty-five years ago there were certain other conditions; but there was nothing to show absolutely what were the original conditions. It might be that there was evidence to show that in consequence of disturbing causes the conditions actually in force had been more favorable at one time to the Zemindars at another to the Bhúinhárs; but that there was nothing to show what were the original conditions of the tenure. To meet such cases, the Committee had made twelve years the period of limitation, and thus had closed the door to difficulties when the real truth was not to be got at.

BABOO PEARY CHAND MITTRA said, the question before the Council received the attention of the Select Committee, and the view of the Committee was that the hands of the Special Commissioner should not be fettered by a question of time. If, by giving unlimited power to the Commissioner, he could use it to preserve the rights of either party, the Commissioner should have the power given to him. There might be a little inconsistency in a legal point of view, but the object of the Section was merely to have the greatest regard for the rights of those concerned; and if this Section really appeared inconsistent, it would perhaps be better to omit it, and leave the matter in the hands of the Commissioner that he might make enquiries, and do justice as the state of things might warrant him to do.

THE ADVOCATE GENERAL did not know whether it was suggested that the consideration of the Section should be postponed, but he would have no objection to a postponement.

MR. THOMPSON said, he would wish to explain the views he took of the subject in the discussions upon it in the Select Committee. The question of limitation had arisen in the consideration of two Sections of the Bill, Sections 7 and 8; and he quite agreed with the Committee that where cases arose as to claims to title to lands

before the Special Commissioner, it was right that his investigations should be limited to a certain and fixed period: and he thought that that period should be restricted to the 12 years which had been provided in Section 7 of the Bill. The older Bengal Regulations on limitation were conclusive in a question of title where adverse possession had been held for more than 12 years, and in the more recent Act of 1859 the same rule had been followed. There was no reason why, in the present case, the same period should not be adopted. There was the analogy of the existing law and the practice which obtained in the country for many years, and the principle was a reasonable one that if claims, however good, as regards the establishment of a disputed title, were not adduced within a period of twelve years, they should not be heard.

But the case seemed to him (Mr. Thompson) altogether different when we come to the consideration of Section 8. The Commissioner here would have no dispute before him as to the actual right of either party to occupy the lands which might be the subject of enquiry, but the question in this place referred solely to the assessment to be fixed or the conditions of labor or service upon which the lands should be held, and in such an enquiry he did not think that it was advisable in the interests of either party to the dispute, or reasonable under the circumstances of the case, that any limitation should be imposed. He had suggested therefore in the Select Committee that it was preferable that the Special Commissioner in such a case should be left free to decide by local custom or usage what were the conditions of each tenure and so make his award. From the papers it would be found—and it seemed to be admitted in the speech of the hon'ble member opposite—that in most cases the original terms and conditions of such tenures were generally traceable, and that in every village there would be a large number of persons to prove what those terms and conditions were. If such evidence was available, the Commissioner should be guided by it in making his award. There was no necessity therefore to bind the Special Commissioner here to a 12 years' limitation. The subsequent additions to the Section of first going beyond the 12 years, and then to the original creation of the tenure, were all in the way of compromises. But it seemed to him (Mr. Thompson) far more satisfactory to adopt the suggestions of the learned Advocate-General to omit altogether the earlier portions of this Section, and to declare that each case as it came before the Special Commissioner should be heard on its merits, and that he should be guided simply by the evidence adduced in support of the claims put forward.

The further consideration of the Section and of Section 9 was then postponed.

Sections 10 to 16 were agreed to.

Section 17 provided that no Mukhtár or Vakíl should be heard without the consent of the Special Commissioner.

THE HON'BLE ASHLEY EDEN moved, that this Section be omitted. No reason had been given, as far as he could gather from a hasty perusal of the papers, for the introduction of such an extraordinary provision; and he thought it was wrong, especially in a country where the people were altogether uncivilized, and not acquainted with the practice of the Courts. There was a certain class of officials who were strongly opposed to the admission of pleaders, and who preferred the dispensation of what was called patriarchal justice under a tree, a system of the practical good results of which he had grave doubts. He thought that in a case of this sort the rights of the people would be prejudiced by a prohibition of the employment of legal advisers: the inhabitants of Chota Nagpore had as much right to professional assistance as any other people; and from the very nature of the proceedings under the Act, cases were likely to arise involving intricate questions and depending upon ancient documents, in the unravelling of which these rude

people would be quite helpless without the assistance of advisers better qualified than themselves.

THE ADVOCATE GENERAL said, he concurred in the opinion of the hon'ble member, subject to the proviso that there were no special reasons disclosed why the permission to engage Mukhtárs should not be accorded. He himself had not seen any reason assigned why this particular distinction should be made. The questions that would have to be determined under the Act would involve more or less of difficulty and nicety; and he did not see why the parties should not have the assistance of professional men. The Preamble of the Bill showed that many cases would be attended with questions of nicety, and he was therefore at a loss to understand why this prohibition of Mukhtárs and Vakíls was introduced, unless there were some very exceptional circumstances which would justify such prohibition; but, as he had said before, he did not find anything in the papers before the Council justifying the introduction of the Section before the Council.

MR. THOMPSON said, the reason for the introduction of this Section was that given by the hon'ble member opposite (Mr. Eden), that the people were so uncivilized and destitute of education, that they would become the tools of designing Bengallees, and that probably better justice would be done under what was called the patriarchal system, by both parties being brought face to face and stating their claims in the presence of the Special Commissioner. It would be observed that the appearance of Mukhtárs and Vakíls was not absolutely prohibited; their admission was made subject to the consent of the Commissioner, who would exercise his discretion in the matter. From his (Mr. Thompson's) own experience in that part of the country, he thought that probably more would be elicited by the personal presence of the actual parties, than by the intervention of third parties, probably liable to be influenced by other motives than that of justice. He would support the retention of the Section.

BABOO PEARY CHAND MITTRA said, the objections to this Section that had been stated to the Council had occurred to him, and he had stated them in Select Committee; but he had noticed that in the Mofussil the body of the Mukhtárs always endeavored to thwart the administration of justice, and the Select Committee therefore determined to exclude them from appearing in cases under this Act without the consent of the Special Commissioner. If a respectable Mukhtár or Vakíl appeared before the Commissioner, he would, as a matter of course, admit him. The Section was not intended to exclude respectable and qualified Mukhtárs and Vakíls; the object was to shut out that class of men who, instead of assisting the Courts in the administration of justice, thwarted them.

MR. DAMPIER said the Section was adopted on the recommendation made to him by the Commissioner and Judicial Commissioner of Chota Nagpore, and he (Mr. Dampier) had very little doubt that every experienced officer in that district would endorse the recommendation. It was not a section to exclude professional agency, but to give a discretion to the Special Commissioner, to whom the Bill entrusted responsible powers in other matters, to admit or exclude these agents according to what might seem to him to be for the best interests of justice. Then as to what was said about the patriarchal system and dispensation of justice under a tree; good or bad, this was precisely what the Bill proposed to provide. The Council were not now legislating for a civilised province and regular Courts of Justice; they were regulating the procedure of an officer who would go into the villages, and justice would, literally, be administered under trees. The Bill itself, superseding as it did the action of the established Courts of justice, was violently opposed to the principle which would apply to a more advanced stage of society. He trusted,

therefore, that the Council would accept the Section which it was now proposed to omit, as being another departure from principle which those best acquainted with the circumstances considered to be really desirable.

BABOO ISSUR CHUNDER GHOSAL said, he agreed that the principle advocated ought to be upheld in a Legislative Council, viz., that both parties should be allowed to engage legal advisers to carry on their suits; but from his own personal knowledge of the Mukhtárs in that part of the country, he knew them to be such an illiterate body, that they were scarcely ever passed by any of the Courts; it was only as a matter of necessity that the Courts were obliged to retain a certain number, otherwise no business could be done; and as such, he (Baboo Issur Chunder Ghosal) believed the Mukhtárs there created more mischief than good;—the discretionary power given to the Special Commissioner would meet the ends of justice.

THE HON'BLE ASHLEY EDEN said he would adhere to his motion, as he had heard nothing on the other side that had induced him to change his opinion. He did not think the respectability of Mukhtárs had anything to do with the question. There were rules for the admission of Mukhtárs, and if a man was unfit to be trusted, he ought not to be admitted to plead by the presiding officer; but to prohibit the appearance of any law agent, without reference to his qualification, was a very different matter. And as for the argument that uncivilized people would not require the aid of Mukhtárs, he thought it was the very reverse; being ignorant and uneducated, they would not be able to read the documentary evidence they had of their rights, and even if they could read their papers, they would not know which of them were necessary to be produced in support of their claims. The suggested evil would remedy itself; if the people found that the Mukhtárs cheated them, they would not in future employ Mukhtárs. No doubt the Commissioners to be appointed under the Act were to be presumed to be discreet and conscientious; but there were cases in which it was known that this question about the admission of Mukhtárs was carried to an extreme point by certain officers, and he did not feel sure that the discretion proposed to be given to them would always be wisely and moderately used.

The Council then divided:—

AYES 3.	NOES 9.
Koomar Satyanund Ghosal.	Baboo Issur Chunder Ghosal.
The Hon. Ashley Eden.	Mr. Sutherland.
The Advocate-General.	Mr. Alcock.
	Baboo Peary Chand Mittra.
	Mr. Knowles.
	Mr. Hogg.
	Mr. Thompson.
	Mr. Dampier.
	The President.

The motion was therefore negatived, and the Section agreed to.

Sections 18 to 20 were agreed to.

The further consideration of the Bill was postponed.

EVIDENCE OF PRISONERS IN CIVIL AND CRIMINAL CASES.

MR. THOMPSON moved that the Bill to provide facilities for obtaining the evidence in civil and criminal cases of prisoners detained in any jail or prison, be read in Council. He said the Council would remember how it was that this Bill had been drawn up; it had been framed generally in accordance with the provisional rules of the High Court; there were, however, one or two provisions which it would be possibly necessary to add to the Bill. The Section referring to the service of process on prisoners in jail, and the provision that when a Court required the personal attendance of a prisoner who was in a jail more than 100 miles from the Court, the sanction of higher authority was necessary, were taken from the Code of Civil Procedure; in such cases, the Court could, if it

chose, issue a commission for the examination of the prisoner, instead of requiring his personal attendance.

BABOO PEARY CHAND MITTRA said it gave him great pleasure that a Bill of this nature had been introduced, and he felt confident that the Bill, with certain modifications, would conduce generally to the furtherance of justice. Some sixteen years ago a case of aggravated assault and plunder was instituted in the Court of the Magistrate of the 24-Pergunnahs. The case was referred to the Principal Sudder Ameen for disposal. The case was instituted by a *khalassee* against a rich Zemindar; it was proceeded with, and the Principal Sudder Ameen found that there was *primâ facie* evidence as to the guilt of the accused. He observed, however, that every difficulty was thrown in the way to prevent the administration of justice in the case, and these efforts were very nearly being successful. The Principal Sudden Ameen, who was no other than the respected Rai Hurro Chunder Ghose Bahadoor, was firm in the discharge of his duties and found that when the accused was brought before him, the prosecutor was not to be found. That excellent officer, however, was persistent in his efforts to do justice, and at last learned that the prosecutor was confined in the Great Jail at Calcutta on an action for debt. He wanted much to take the evidence of the prosecutor, and referred the matter to the Magistrate, the Magistrate to the Nizamut Adawlut, the Nizamut to the Government, and the Government to the Advocate General, who was of opinion that unless the Principal Sudder Ameen instituted an action in the Supreme Court, he could never succeed in taking the evidence of the prosecutor; and he was not quite sure that a writ of *habeas corpus* could be granted. The Principal Sudder Ameen, however, on the advice of the Government Solicitor, visited the jail, and on the evidence of the prosecutor being taken the accused was convicted and punished. The Principal Sudder Ameen had the case then brought to the notice of the Chief Justice of the Supreme Court, on which the prosecutor immediately obtained his discharge from the Jail. The object of stating to the Council the facts of this case was to show that the evil proposed to be remedied by the Bill was not of recent origin, but had been existing for many years. Approving as he (Baboo Peary Chand Mittra) did of the principle of the Bill, it was his duty to submit that Section 5, which gave large powers to the jailor, was open to serious objection. In the first instance, it was clear that,—

THE PRESIDENT said, the hon'ble member was not in order in referring to details; in this stage the discussion should be confined to the general principle and features of the Bill. The hon'ble member would have an opportunity of discussing the several provisions of the Bill both in Select Committee and when the Bill came up after report for the consideration of its clauses.

BABOO ISSUR CHUNDER GHOSAL drew attention to the 3rd Section of the Bill, which provided that the person applying for the examination of a person confined in jail should pay the expenses of the conveyance of the prisoner from and to the jail; he thought some provision should be made to suit the case of persons who were paupers, and therefore unable to pay any expenses.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Ashley Eden, Baboo Issur Chunder Ghosal, Mr. Alcock, and the mover, with instructions to report in a fortnight.

CRUELTY TO ANIMALS.

On the motion of Baboo Peary Chand Mittra, the Hon'ble Ashley Eden and Mr. Alcock were added to the Select Committee on the Bill for the Prevention of Cruelty to Animals.

The Council was adjourned to Saturday, the 19th December.

Saturday, 19th December, 1868.

PRESENT:

The Hon'ble the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
S. S. Hogg, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Koomar Satyanund Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

NEW MEMBER.

Baboo Chunder Mohun Chatterjee made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

EVIDENCE OF PRISONERS IN CIVIL AND CRIMINAL CASES.

MR. THOMPSON moved that the Report of the Select Committee on the Bill to provide facilities for obtaining in civil and criminal cases the evidence of prisoners detained in any jail or prison be taken into consideration, in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. He said two principles were laid down in the Report of the Committee; the first was that the evidence of the prisoner was material and indispensably necessary in the interests of justice, and secondly that the power of requiring the evidence of persons confined in jail should not be exercised by any subordinate Court until the order had been considered by the chief judicial authority in the district in which the prisoner was detained. The Committee had also thought proper to include a provision for bringing before the Courts a prisoner charged with a criminal offence. A circumstance lately arose in which a prisoner confined for some petty offence was found to be suspected of being guilty of a more heinous crime; and the sub-divisional officer, before whom the charge was laid, on applying to the jail authorities for the presence of the prisoner, was refused. The Committee had therefore thought proper to include in the Bill, not only provisions for enabling the Courts to obtain the evidence of prisoners in civil and criminal cases coming before them, but to enable the Courts to direct any prisoner to be brought up before them to answer a different charge. The Committee also proposed that when the evidence of a prisoner was required by a Court situated in a different district from that in which the prisoner whose evidence was required was confined, the order should be executed through the District Court of the district in which the prisoner was confined. Again, there was a Section giving the Lieutenant-Governor power to prevent the removal of a prisoner whose removal might be attended with risk; such for instance as a prisoner confined for a State crime or a prisoner belonging to a particular class. Under the Code of Civil Procedure, it was optional for the Courts to issue a commission when it was desired to obtain the evidence of a witness residing at a distance of 100 miles or more from the place where the Court was situated. The Committee had thought proper to make it imperative that a commission should issue in the first instance where the Court required the evidence of a prisoner confined in a jail at a greater distance than 100 miles; and the Committee had also made a provision for the serving of civil process on prisoners.

The motion was agreed to.

Section 1 provided that the Court might order a prisoner, whose evidence was material *and necessary* in any case, to be brought up before it.

THE ADVOCATE GENERAL said, if the evidence of a witness was necessary it must be material, and the sole question was whether the election should be between the materiality of a prisoner's evidence and its necessity. The Council would probably be aware that as to what evidence was considered necessary was rather a question of law, and there were many cases occurring in which if you confined the evidence to what was neces-

sary in point of law, and excluded all other evidence however material, the evidence, though theoretically sufficient, could not be satisfactory. There were always witnesses whose evidence, if not legally necessary, was practically material; and the test should be, not the legal necessity of a prisoner's evidence, but the materiality of his evidence. He should therefore move to omit the words "and necessary," and it would be for the Court to determine, in the exercise of its discretion in each particular case, as to the amount of materiality that would justify it in requiring the evidence of a prisoner.

MR. THOMPSON explained that the Bill followed in this respect the rules that had been framed by the High Court, and there the words were:—

"The grounds of such notice or application shall be that the prisoners ought to be produced as a witness is a *necessary* witness."

If, as the learned Advocate-General said, it would be sufficient to provide that a prisoner's evidence should be considered to be material to justify the Court in requiring the attendance of a prisoner, he had no objection to offer to the omission of the words "and necessary."

The motion was agreed to, and the Section, as amended, was passed.

Section 2 was agreed to.

Section 3 provided as follows:—

"In case such suit, cause, matter, or charge may be pending or made in any Court subordinate to a District Court or to a Court of Session, or in any Court of Small Causes, no order under this Act shall be issued until the same shall have been submitted to, and countersigned by, the Judge of the District Court or of the Court of Session to which such Court may be subordinate, or to the Judge of the District Court of the District within which such Court of Small Causes may be situate, and such Judge may, if after having heard the grounds upon which the application is made for such order he may deem it to be inexpedient to issue the same, decline to countersign such order."

THE ADVOCATE-GENERAL said, he did not know if it had been considered by the Select Committee whether, having regard to the provisions of Act XI. of 1865, this Council had power to pass an Act under which Courts of Small Causes in the Mofussil (the Court of Small Causes in Calcutta being excepted from the operation of the Bill) could be given any jurisdiction (because that was what in effect the Act contemplated) for the issuing of what would be equivalent to summonses or subpœnas to prisoners. The Mofussil Small Cause Courts were originally established under Act XLII. of 1860, which was amended by Act XII. of 1861, and both of which were passed before the Indian Councils' Act. But at present the jurisdiction and practice and procedure of Small Cause Courts in the Mofussil were regulated by Act XI. of 1865, which was passed since the Indian Councils' Act came into effect, and the Act of 1860, under which the Courts were originally established, was repealed *in toto* by the Act of 1865. He therefore thought it more than doubtful whether the Council could effectively pass any Act which must have the effect of giving extended jurisdiction or an extension of the power of issuing process which by the Act of 1865 was vested in Small Cause Courts. He observed that that Act was extremely general in its form as regards the whole question relating to practice and procedure. The Act of course substantively dealt with the question of the jurisdiction of the Courts and generally made over cases of such and such amounts to those Courts. But there was nothing in the Act, with regard to the powers of the Court as to practice or procedure, but this, that in defining the duties of the Registrar it was provided in Section 36 that he was to issue processes for the attendance of witnesses, and in Section 46 it was provided that the High Court should have the power to make and issue general rules for regulating the practice and proceedings of the Courts; and that was all that the Act provided with regard to the practice and procedure of the Courts of Small Causes. It might be that the High Court had power to make rules to effect the desired purpose. But be that as it might, he thought that it was not competent for this Council to give directly to the Courts

of Small Causes in the Mofussil, any more than to the Small Cause Courts of the presidency towns, power to issue orders for the removal of prisoners such as were contained in the present Bill. He thought, however, that the difficulty might be got over in this way. He would propose to omit in the 3rd Section any reference to Small Cause Courts, and to add a Section providing that in the case of a civil suit pending in a Small Cause Court in which it was desired to have the evidence of a prisoner confined in jail the application for an order for the removal of the prisoner to give evidence should be made in the first instance to the Judge of the District Court. It would be competent for this Council to pass an Act having relation to the process and jurisdiction of the several Courts of the District, and to empower the Judge of the district, on application, to direct that a prisoner should be taken from the jail on a certain day and at a certain hour before the Small Cause Court or any other Court or place, then and there to be examined. He thought the whole difficulty would be got over by striking out the words "or in any Court of Small Causes," and omitting the words "or to the Judge of the District Court of the district within which such Court of Small Causes may be situate" And then he (the Advocate-General) would move to insert another Section, which he would propose hereafter.

THE HON'BLE ASHLEY EDEN said he thought that, if the difficulty which the learned Advocate-General pointed out really existed, it would be better to adopt the amendments which he had suggested. It struck him (Mr. Eden) that the Section under consideration, as far as regards Small Cause Courts, did not contemplate one of those alterations which really came under the prohibitory clauses of the Indian Councils' Act. The 42nd Section of that Act provided :—

"The Governor of each of the said Presidencies in Council shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for the peace and good government of such Presidency, and for that purpose to repeal and amend any laws and regulations made *prior* to the coming into operation of this Act by any authority in India, so far as they affect such Presidency."

Now it seemed to him that this Section of the Bill before the Council did not repeal and amend any existing law. It simply gave to existing Courts increased facilities in the mode of procuring evidence, and in no way limited or interfered with any powers which they possessed under any existing law.

THE ADVOCATE GENERAL said the Section of the Indian Councils' Act which the hon'ble member had just read, and which applied equally to the Council of the Lieutenant-Governor of Bengal, had always been understood to have the legal effect of preventing the Local Councils from passing any Act which would have the effect of altering any Act passed by the Governor-General in Council since the coming into operation of the Indian Councils' Act, It must be undoubted that until this Bill was passed, or some similar measure was enacted by the Council of the Governor-General, neither the High Court nor any Court had the power of removing any prisoner from jail for the purpose contemplated by this Bill. The extension of such a power to the Mofussil Small Cause Courts was therefore an extension of the powers conferred on them by Act XI. of 1865, and consequently an extension of the provisions of that Act.

THE HON'BLE ASHLEY EDEN urged that this practical difficulty stood in the way of the learned Advocate-General's amendment. The District Judge, before he could be in a position to judge of the materiality of a witness's evidence, must have the party before him. Now it involved some hardship to a person desiring the evidence of a prisoner in a suit in a Small Cause Court in the interior, that to enable him to secure this attendance he should have to travel to the Sudder Station to make an affidavit before the District Judge. He (Mr.

The Advocate General

Eden) wished to know if the amendment could not be altered so as to permit of the affidavit being made before the Small Cause Court Judge, and forwarded by him to the District Judge.

THE ADVOCATE GENERAL said, the application must be on affidavit, and the District Judge would be in the same position as to judging of the materiality of a prisoner's evidence as the Judge of the Small Cause Court before whom the case was pending.

MR THOMPSON said the suggestion made regarding the exclusion of Small Cause Courts was attended with some practical difficulties. In some districts there were Small Cause Courts situated at a great distance from the District Judge's Court. In Kishnagur, for instance, the Small Cause Court at Kooshtea was about 60 miles distant from the Sudder Station. Suppose, therefore, a suit to be instituted at the Kooshtea Small Cause Court in which the evidence of a prisoner was material, the application would have to be made in the first instance to the District Judge 60 miles away, who would practically have to be the judge of the materiality of the prisoner's evidence, and the prisoner would have to be sent from a jail adjoining the District Judge's Court, to the Court of Small Causes at Kooshtea 60 miles off, and consequently great difficulties and inconvenience would arise. The only efficient way in which the difficulty could be met would be by the Bill introduced yesterday in the Council of the Governor-General, which would have full power to legislate as regards Small Cause Courts as well as all other Courts. If, as regards this Council, it would be sufficient to omit the words proposed to be struck out, he (Mr. Thompson) would have no objection.

THE PRESIDENT said he did not see the force of the objection taken by the hon'ble member who spoke last, because it was not the case that the District Judge would be always in the same place as the Jail in which the prisoner whose evidence was required was confined.

THE ADVOCATE GENERAL said, the hon'ble member on his right (Mr. Thompson) referred to the distance in some cases between the place where the Court of Small Causes was situated and the Court of the District Judge; but the same objection would apply to the case of a prisoner's evidence being required in any other Court than a Small Cause Court, because under the Section before the Council every order issued by any Court subordinate to the District Judge, would have to be countersigned by the District Judge. The Section contemplated that the Judge of the District Court should exercise his discretion as to the expediency or otherwise of permitting the removal of a prisoner for the purpose of taking his evidence, and the District Judge must have the same grounds before him to enable him to exercise his discretion, as the Judge of the Small Cause Court or any other Court. There would, he (the Advocate-General) believed, be no legal objection whatever to the necessary affidavit accompanying the application for a prisoner's evidence being sworn in the Court of Small Causes before which the prisoner was ultimately to be examined.

MR. THOMPSON explained that the objection he entertained was that in the case of Small Cause Courts the Judge of the District Court, sometimes a long way off, would have himself to decide, without any knowledge of the facts of the case and without any reference from the Small Cause Court, upon the materiality of the particular evidence required. He would have in such cases only the one-sided statements of one of the parties to the suit. In other cases the application would be accompanied with the statements and explanations of the Court requiring the attendance of the prisoner A suitor in a Small Cause Court might interpose all kinds of delays and postponements to the disposal of a case, by insisting upon his right to apply to a District Court at a long distance off—delays which a Judge of the Small Cause Court would, under the proposed

arrangement, have no power to avert, however much he might be disinclined to allow that any further evidence was material in the interests of justice.

THE ADVOCATE GENERAL said, no doubt there would be the possible difficulty of a Court of Small Causes refusing to take such an affidavit, though he did not think that a Judge of a Small Cause Court would be so blind to an application of that kind as to refuse to allow an affidavit to be sworn as the grounds of an application to the District Judge for the removal of a prisoner whose evidence was material to the determination of a suit before the Court itself. It had been said, also, that the Judge of the District Court would not have before him the grounds on which a prisoner's evidence was applied for, but he (the Advocate-General) thought that the Judge would have the grounds of the application set before him, and he would be in the same position as if the affidavit had been made before him in the ordinary way; and every proper affidavit would set forth the facts of the case and the grounds of the materiality of the evidence of the prisoner whose removal from jail was applied for, and thus the Judge of the District Court would be in the same position to deal with the matter as the Judge of the Small Cause Court could be.

The amendments proposed by the Advocate-General were then carried, and the Section, as amended, was agreed to.

THE ADVOCATE GENERAL said, he had mentioned that he would propose the introduction of a new Section after Section 3, but he would now ask that the consideration of the proposed Section be allowed to stand over.

Sections 4 and 5 were agreed to.

Section 6 related to the advance of costs in cases where the person applying for the evidence of a prisoner was not able to deposit the same, and for the recovery of such costs from the person ordered by the Court to pay the same.

THE ADVOCATE GENERAL said, as the Section stood, costs advanced by the Court for the expenses of prisoners from and to the jail in which they were confined were to be made recoverable from any person ordered by the Court to pay the same, as if the same were an amount of stamps calculated under the provisions of Section 309 of the Code of Civil Procedure; but that Section of the Code simply said that the amount was to be recovered in the same way as costs of suit. It would be better, therefore, to say directly that the costs should be recoverable as if the same were costs of suit under the Code of Civil Procedure. He would therefore move an amendment to that effect.

The motion was carried, and the Section, as amended, passed.

Section 7 was agreed to.

Section 8 was passed after verbal amendments.

Section 9 was as follows:—

"In case any officer in charge of any jail or prison may deem it to be probable that any prisoner mentioned in any such order may escape or be rescued in proceeding from or returning to such jail or prison in obedience to such order, or that any prisoner mentioned in any such order is from any bodily infirmity unfit to be removed, he shall apply to the Magistrate of the District in which such jail may be situate, and in case such Magistrate shall by any writing under his hand declare himself to be of opinion that such escape or rescue is probable, or that such prisoner is from bodily infirmity unfit to be removed, such Officer may abstain from obeying such order, and shall in such case send to the Court from which such order shall have been issued a statement of his reasons for not obeying such order."

THE ADVOCATE GENERAL said, he did not know what had been the precise grounds on which certain portions of this Section had been introduced by the Select Committee (if they had been introduced by the Committee) but it seemed to him somewhat an extraordinary process to legislate with reference to the possibility that a prisoner should escape in proceeding to or returning from the Court to which he was being carried for the purpose of giving his evidence. The previo u

Sections provided for the cost of the necessary escort and guard for the removal of a prisoner from jail, and it seemed somewhat peculiar to suppose that notwithstanding the necessary escort and guard a prisoner should escape. He should have thought that, with regard to prisoners, regarding whom such strong sympathies might exist, the Lieutenant-Governor would, in the exercise of his discretion, prohibit their removal. He (the Advocate-General) did not think the Council should legislate on such hypothetical grounds. Unless, therefore, there were good grounds for such a provision, which as he had said before he was not aware of, he would propose to leave out all the words relating to escape or rescue, leaving the Section to apply to the case in which a prisoner was, from bodily infirmity, unfit to be removed.

BABOO PEARY CHAND MITTRA said, he also was of opinion that this Section, to which he had objected when the Bill was introduced, should be modified. He thought that the Council should preserve the dignity and respect due to the Judicial Courts, and not permit a jailor to disobey an order issued by any Court. To do so would tend to depreciate the Courts of the country, and in the interests of justice it would be better to run the risk of the escape or rescue of a prisoner, than to confer such powers on jailors. If, however, it were the pleasure of the Council that the jailor should have some such power to secure the safety of prisoners, the jailor should, in that case, be made the channel of communication, and not the Officer with whom should be vested the discretion of disobeying the order of the Court. In its present shape the Section was liable to that objection, and it ought to be modified.

MR. THOMPSON said, the remarks made by the hon'ble member who spoke last proceeded on a misapprehension. The Officer in charge of the jail was not the jailor; and whatever objection there might be to the jailor being empowered to refuse to obey the order of the Court, the Section provided that the officer in charge of the jail, not the jailor, should communicate with the Magistrate of the District; and if the Magistrate thought there was sufficient reason to disobey the order of the Court, he would send to the Court issuing the order a statement of his reasons for not obeying the order.

With regard to the amendments proposed by the learned Advocate-General, he would mention that the Bill, as introduced, simply gave a power to the magisterial authorities to disobey any order of the Court when they thought that the prisoner, whose evidence was required, could not safely be sent to the Court; but as the Select Committee had introduced a Section giving the Lieutenant-Governor power to exempt cetain prisoners or classes of prisoners from the operation of the Act, it might be desirable to omit certain parts of Section 9 as proposed by the Advocate-General. He (Mr. Thompson) would observe, however, that there were cases where from the peculiar position of the Magistrate of the District he might be aware of circumstances rendering the removal of a prisoner a matter of risk, which might not have come to the knowledge of the Government; and in the case of notorious criminals and some political offenders, it secured to him the right that a discretionary power of refusing to allow the removal of such prisoners should be retained.

BABOO ISSUR CHUNDER GHOSAL said, he thought Section 9 ought to be omitted, and would therefore support the motion of the learned Advocate-General so far as it went. If there were given to the District Magistrate a power to disobey the order of the Court, it might create mischief of another kind, because the party to the action who was opposed to the party applying for the examination of a prisoner, might take measures to obtain through other channels objections to the removal of the prisoner which might have the effect of causing the jail authorities to refuse to

obey the order of the Court. He (Baboo Issur Chunder Ghosal) thought therefore that the objections to the Section should be further considered.

THE PRESIDENT said it was so apparent that the general sense of the Council was not to omit the Section altogether, that he would first put the amendment of the Advocate-General to the vote. Any other hon'ble member might then move any further amendment that he thought fit.

THE ADVOCATE-GENERAL'S amendments being put, the Council divided :—

AYES 11.	NOES 2.
Baboo Issur Chunder Ghosal.	Mr. Thompson.
Baboo Chunder Mohun Chatterjee.	Hon. A. Eden
Koomar Satyanund Ghosal.	
Mr. Sutherland.	
Mr. Alcock.	
Baboo Peary Chand Mittra.	
Mr. Knowles.	
Mr. Hogg.	
Mr. Dampier.	
The Advocate-General.	
The President.	

The motion was therefore carried.

BABOO ISSUR CHUNDER GHOSAL then moved that the Section be omitted altogether. For, as he had said before, he thought the Section defeated the entire principle of the Bill. The Bill was introduced to overrule all objections which at present existed to the removal of a prisoner from the place of his detention for his examination elsewhere. And if option were given by law to raise those objections which it was the object of the Bill to remove, he thought the Bill would create more mischief than good.

The motion was put and negatived.

The Section was then passed after a verbal amendment made on the motion of the Hon'ble Ashley Eden.

MR. DAMPIER said, before the Council proceeded to the consideration of the next Section, as it was possible he might move an amendment on Section 9 at the next meeting, he wished to explain that he had voted for the motion of the Advocate-General simply on account of the wording of the Section. It appeared to him that the power of refusing to obey the order of the Court in certain cases, ought to be vested in the Magistrate of the District, and it might be rather dangerous not to leave such a discretionary power in certain districts. But he did not like the wording of the Section as it stood, and therefore had voted for the amendment, but he did so with the reservation that he might propose a clause hereafter, giving a power of refusal to the Magistrate of the District in cases where he thought the removal of a prisoner for the purpose of giving evidence could not be safely acceded to.

Section 10 authorized the Lieutenant-Governor to make rules for the custody and security of prisoners during their absence from jail.

MR. THOMPSON explained that it was proposed in Committee that the Act should lay down the necessary rules for this purpose; but it was considered that the circumstances in different districts might be so various, that it was thought better to vest the Lieutenant-Governor with the power of making rules to provide for the cases in which, and the manner in which, prisoners should be detained in security while under examination as witnesses.

The Section was then agreed to.

Section 11 provided that no order for the removal of a prisoner should be made if the jail in which such prisoner was confined were situated more than 100 miles from the place in which his evidence was required.

THE ADVOCATE-GENERAL said that if this Section were compared with the following Section, he thought it would be admitted that there was an omission This Section contained a specific enactment that no order was to be made for the removal of a prisoner detained in a jail more than 100 miles from the Court which made the order. Then, the next Section provided that in any

case in which it might be deemed expedient, a commission should issue for the examination of a prisoner, instead of an order for his removal. In a case coming under the 11th Section, there would be no question of expediency; the Court would have no power to act. He would, therefore, propose to add to the end of Section 11 the following words: —

"In such case the Court may, if it think fit, issue a commission under the next following Section."

And then in Section 12, he would propose to move an amendment which would make the first part of the Section stand thus:—

"In any case under the last preceding Section, or in any case where the removal of a prisoner had been prohibited under Section 8, or in the case of a prisoner coming within the provisions of Section 9, or in any other case"—

The effect of these amendments would be that where a prisoner was confined in a jail 100 miles distant, the Court would be bound, if it thought the evidence of the prisoner material, to grant an order for the issue of a commission for the examination of such prisoner. But in any other case there would be a discretionary power with the Court to grant a commission or not as it might think proper.

Sections 11 and 12 were then agreed to, with the amendments proposed by the Advocate-General.

BABOO PEARY CHAND MITTRA then moved the introduction of the following new Section after Section 12:—

"In cases where a Court thinks it expedient to examine a prisoner in jail, it shall be at liberty to exercise that power."

He said, he thought facilities ought to be provided for the examination by judicial officers of prisoners in jail, if such officers could conveniently do so. Such a course would not only save expense to suitors, but would be more conducive to the interests of justice than the issuing of commissions. The examination of witnesses by commission was the next best course, but an examination by the judicial officer who would have to try the case, would be the most effectual course, for he would then be better enabled to judge of the value of the prisoner's evidence, than by merely reading the answers to interrogatories put through commissioners.

MR. THOMPSON did not see the advantage to be derived by a judicial officer visiting a jail to take the evidence of a prisoner. If a prisoner was accessible, and his presence could be easily obtained, it would be much better to confront him with the parties and subject him to cross-examination, than that the Court should have the trouble and inconvenience of going to the jail to take the evidence of the prisoner. The hon'ble member was not long since eloquent in speaking of the depreciation of the authority of judicial officers in allowing the Magistrate of the District, on the report of the officer in charge of a jail, to refuse to obey the order of the Court for the attendance of a prisoner for the purpose of giving his evidence. But he (Mr. Thompson) thought it would be depreciating the authority and respect due to judicial officers much more to say that they should attend a jail for the purpose of taking the evidence of a prisoner. It would be better that a prisoner whose presence in Court could not be procured, should be examined by commission by interrogatories put through the Court.

BABOO PEARY CHAND MITTRA said, if a prisoner from the state of his health or any other cause could not be brought before the Court, and if the judicial officer thought it necessary himself to take the evidence of a prisoner in preference to issuing a commission, the judicial officer ought to be permitted to exercise his discretion in the matter.

MR. DAMPIER would ask the hon'ble member in charge of the Bill how he met this argument as to the case of a man who was either so ill that he could not be removed from jail,

or the case of a man against whose removal an order of the Lieutenant-Governor existed; the man might be in a jail adjoining the Court and, as he (Mr. Dampier) understood the Bill, the Court would have no discretion in the matter to proceed to the jail and examine the man there, but would be bound to issue a commission for his examination.

MR. THOMPSON said, he thought it would be preferable to issue a commission, which could be directed to the officer in charge of the jail, who could take the evidence of a prisoner who was unable to attend the Court.

BABOO ISSUR CHUNDER GHOSAL said, in Select Committee he understood that a commission was to be issued only in a case where a prisoner, whose evidence was required, was confined in a sub-divisional jail, that was to say when the prisoner was in the custody of a Deputy Magistrate or officer in charge of a sub-division; and that if the prisoner was in the Sudder Station Jail no commission would be necessary.

The motion was then put and negatived.

Sections 13 to 15 were agreed to.

THE ADVOCATE-GENERAL said that before Section 16, which was the interpretation Clause, was considered, he would propose the introduction of a new Section, and he wished to mention, with reference to the next meeting of the Council, that he would move the introduction of another Section, which, coupled with an alteration of the schedule of forms, was deserving of consideration; but at present he would only move to introduce the following:—

"A prisoner removed under this Act for the purpose of giving evidence shall be regarded as a witness duly summoned under the Code of Civil Procedure."

As the Act stood, the officer in charge of the jail was empowered to bring up to the Court a prisoner for whose attendance an order was issued, but the Act did not require that the prisoner should give evidence, for he was not summoned as a witness. It would be well therefore to provide that he should be so summoned.

The motion was agreed to.

THE ADVOCATE-GENERAL said, he did not intend, at the present stage, to move any further substantive amendment, but he would mention that he should wish to bring forward a provision (he did not read the specific amendment then) with reference to the order which was to be made with regard to the return to jail of a prisoner removed for the purpose of giving his evidence. As the Bill stood it contemplated, according to the Schedule, only an order which, in the case of a prisoner called to give evidence, provided that he was to be returned to the jail in safe and good conduct after giving his evidence, and as to a prisoner who was brought up under a charge that he should be taken back after the charge should have been disposed of. To take the latter case first. Suppose a prisoner was in jail under a conviction on a former charge, and the order was that he was to be brought up to answer another charge. The preliminary enquiry into the subsequent charge might require several adjournments. The same remarks would not apply where the order was for the prisoner to be brought before the Court of Session, but in a preliminary enquiry there might be adjournments of a week or more, and it might be very undesirable that in such a case the prisoner should be kept outside the jail, pending all those adjournments. The prisoner might be sent back and brought up again on a fresh order. So with reference to a prisoner called to give evidence. Although you fixed the day and hour for the taking of a witness's evidence, the Court might find it extremely inconvenient to take his evidence at the appointed time, and the Court would postpone its doing so. Then again, after a prisoner had given his evidence, something might occur to make the parties on either side, or the Court, wish to recall the witness and put him fresh questions. And in either of those cases he thought it would be

very desirable that, instead of the forms of orders as they stood providing for the return of the prisoner, they should simply provide that he was to be brought there to testify or to answer the charge as the case might be, and to abide the further order of the Court. He (the Advocate-General) could not now lay before the Council the proper alteration, but he merely threw out these suggestions with special reference to their having the consideration of the hon ble mover of the Bill.

He thought also that to remove all doubt a provision should be introduced to provide that the lapse of time between the removal of a prisoner from jail, whether to give evidence or to answer a fresh charge, was to reckon as part of the term of imprisonment.

The further consideration of the Bill was then postponed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. THOMPSON moved that the Hon'ble Ashley Eden be substituted for Mr. Dampier on the Select Committee on the Bill "to amend the procedure in suits between Landlords and Tenants," and that Baboo Issur Chunder Ghosal and Baboo Chunder Mohun Chatterjee be added to the Committee.

The motion was put and agreed to.

The Council was adjourned to Saturday, the 2nd January, 1869, at 11 A.M.

Saturday, 9th January 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General.*
The Hon'ble Ashley Eden.
H. L Dampier, Esq.
A. R. Thompson, Esq.
S. S. Hogg, Esq.
H. Knowles, Esq.
Baboo Peary Chand Mittra.
T. Alcock, Esq.
H. H. Sutherland, Esq.
Koomar Satyanund Ghosal.
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA moved that the Report of the Select Committee on the Bill for the Prevention of Cruelty to Animals be taken into consideration, in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. In doing so, he said the Select Committee, in their Report, had proposed to omit the 4th Section of the original Bill, as the object with which that Section was introduced was already provided for by Section 5 of Act III. of 1857, and it was also proposed to omit Section 6 of the original Bill, because it was embraced in the 2nd Section of the amended Bill. The existing law for the punishment of cruelty to animals in Calcutta and its suburbs was not uniform; it was therefore proposed to repeal the provisions in that respect contained in the Calcutta and Suburban Police Act, and to enact instead a more comprehensive law on the subject. The Select Committee had also made some verbal amendments in some of the Sections, and gave power to the Lieutenant-Governor to extend the provisions of the Bill to any district where His Honor might deem it necessary. Such a power appeared to be very much needed, as traffic was increasing in several districts, and it might be found necessary to extend the Bill to such places. It might, at first sight,

appear an omission in the Bill not making any provision for the levy of fines, or the commutation of fines to imprisonment; but Sections 63 to 70 of the Indian Penal Code, and Section 61 of the Code of Criminal Procedure, as well as Section 4 of Act V. of 1867 of this Council, bore on the subject, and it had therefore been thought unnecessary to make any mention in the Bill as to the levy of fines or the commutation to fine of sentences of imprisonment.

The motion was agreed to.

Sections 1 and 2 were agreed to.

Section 3 provided a penalty for overloading.

THE ADVOCATE-GENERAL moved the omission of the Section. He thought that, if in this Section overloading was intended to mean something which did come under the description of ill-treatment, the term "overloading" should be defined; but with every respect to the hon'ble members, he thought it impossible to lay down such a definition of overloading which would not fall under the terms "ill-treat, abuse, or torture," which were used in the preceding Section. If there was any determinate measure by which certain descriptions of animals, drawing certain descriptions of vehicles, or carrying certain loads, were not to be burdened beyond a certain weight, that should be defined; but he thought there would be extreme difficulty in framing such definitions, and, in addition to that, it should be observed that this Section would impose liability on a person overloading from, it might be, purely accidental causes, and without any cruel or disregardful feeling towards the animal. The Council must, therefore, say pretty specifically what overloading was, or leave it to be dealt with as a particular form of ill-treatment, and the Magistrate, in any case that came before him, would decide on the evidence, and at his discretion, whether the overloading alleged did or did not amount to cruelty.

THE HON'BLE ASHLEY EDEN said he might mention that the objection taken by the learned Advocate-General was one which occurred to him in Select Committee, but he was asked to agree to the insertion of this Section on the ground that in the streets of Calcutta cases occurred daily, in which it was impossible to say that the overloading was such as would bring it within the definition of wanton ill-treatment, but which ought, nevertheless, to be put a stop to, and he was not sure that the case was exactly met by the provisions of Section 2, under which the ill-treatment must be cruel and wanton; still if it could be so included he should be very glad to accept the Advocate-General's amendment.

THE ADVOCATE-GENERAL said he thought the suggestion of the hon'ble member would be met by the insertion of the word "overload" in the 2nd Section. In that Section, the beating, ill-treating, abusing, torturing, &c., must be cruel and wanton. It was the cruelty which was the gist of the offence, and not merely the fact of overloading. He would therefore move the omission of Section 3, and the insertion of the word "overload" in Section 2.

BABOO PEARY CHAND MITTRA said, if the effect of the Advocate-General's motion would be the same as the intention of the present Section, he would have no objection to the amendment. But one great object of having a distinct Section was to draw public attention to the crying evil of overloading.

THE Advocate-General motion was then agreed to.

Sections 4 and 5 were agreed to.

Section 6 provided a penalty on employing an animal unfit for labor, by reason of any disease, infirmity, wounds, or sores.

THE ADVOCATE-GENERAL would ask the hon'ble member in charge of the Bill what was the reason for making a distinction between abuse or ill-treatment and the employment of an animal in work when it was unfit in consequence of disease and the like. Was it intended under Section 6 that a

person employing such an animal, without knowing that it was diseased, was to be liable to a fine? If the Section was meant to extend to the wilful and knowing enployment of animals unfit to work, which was of course a case of abuse or ill-treatment, and which every person agreed was one of the worst kinds of ill-treatment, the person so offending would be liable, under this Section, to a fine of 50 rupees only, and for ill-treatment generally the punishment under Section 2 was a fine of 100 rupees. He did not know whether Section 6 was intended to apply to the case of the employment of an animal without the knowledge of its being unfit for labor.

THE HONBLE ASHLEY EDEN said; he imagined the Section was intended to meet cases which were perpetually occurring and being prosecuted in the Police Courts, namely, driving bullocks with sore necks, without any real intention of cruelty; and in consequence of the great number of such cases, it was thought necessary to have a separate Section with a lighter punishment than was provided for wanton cruelty. Where the offence was not wantonly committed, the punishment should very properly be less severe than in other cases, as there were many instances in which such a use of bullocks arose from mere carelessness and negligence, culpable and deserving punishment no doubt, but still met by a punishment sufficient to act as a warning.

THE ADVOCATE-GENERAL said, he did not at first understand the object of the Section, but with the explanation just offered, he would not move any amendment.

The Section was then agreed to.

THE HON'BLE ASHLEY EDEN moved the following new Section after Section 6:—

"All complaints of offences against the provisions of this Act, alleged to have been committed in the town of Calcutta, shall be heard and determined in a summary way by some Police Magistrate of Calcutta."

The motion was agreed to.

Sections 7 to 9, and the Preamble and Title, were then agreed to.

REGULATION OF CERTAIN TENURES IN CHOTA NAGPORE.

MR DAMPIER said, since the Bill to ascertain, record, and regulate certain tenures in Chota Nagpore was last considered in Council, the President was aware that he (Mr. Dampier) had had an opportunity of consulting personally with Colonel Dalton, who had given very valuable information and advice on the subject of the Bill, which had led him (Mr. Dampier) to the conclusion that considerable alterations should be made in the Bill as originally laid before the Council. He was prepared at once to explain the necessary alterations in Select Committee, and he thought that would be the shortest way of proceeding with the Bill. He would therefore move that the Bill be referred back to the Select Committeee, with instructions to submit a report within a week.

The motion was agreed to.

EVIDENCE OF PRISONERS IN JAIL.

MR. THOMPSON postponed the motion which stood in the list of business for the further consideration of the Report of the Select Committee of the Bill to provide facilities for obtaining the evidence, in civil and criminal cases, of prisoners detained in any jail or prison. He said it would be in the knowledge of the Council that a Bill of similar import had been introduced in the Council of the Governor-General, and he had been given to understand that it had proceeded to a second reading, and had been referred to a Select Committee for report; he therefore thought that the Bill now before this Council should not at present be proceeded with. If, however, any circumstances should prevent the passing, during the present Sessions, of the Bill which had been introduced in the Council of the Governor-General, this

Council would be in a position to pass the Bill now before them in the course of one sitting; but at present it would only be waste of time to proceed with the Bill. He therefore moved that the further consideration of the Bill be postponed.

The Council was then adjourned to Saturday, the 23rd instant.

Saturday, 23rd January 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General.*
The Hon'ble Ashley Eden.
H. L. Dampier, Esq.
A. R. Thompson, Esq.
H. Knowles, Esq.
Baboo Peary Chand Mittra.
T. Alcock, Esq.
H. H. Sutherland, Esq.
Koomar Satyanund Ghosal.
Baboo Issur Chunder Ghosal.
and
Baboo Chunder Mohun Chatterjee.

CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA moved that the Bill for the prevention of Cruelty to Animals be passed.

THE ADVOCATE-GENERAL said, that before the Bill was passed he wished to move an amendment, of which he had given notice, namely, the introduction of the following Section after Section 6:—

"Every charge of an offence against the provisions of this Act, alleged to have been committed out of Calcutta, may be heard and determined by any Officer authorized to exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed, and the provisions of the Code of Criminal Procedure shall apply to the trial of every such charge."

It would be in the recollection of the Council that, on the last occasion on which this Bill was considered, certain words giving summary jurisdiction to Magistrates were struck out, and there had been introduced a new Section providing for the summary jurisdiction of Police Magistrates in the case of offences committed in the Town of Calcutta. It however appeared to him to be necessary that words should be introduced giving jurisdiction to Officers now exercising the powers of Magistrates in the Mofussil. It was quite true that under the Code of Criminal Procedure, Section 21, it was provided that the Criminal Courts of the several grades, according to the powers vested in them respectively by that Act, should have jurisdiction in respect of offences punishable under the Penal Code, or under any special or local law. And then Section 22 went on to say, that the offences mentioned in the Schedule annexed to the Act should, subject to the provision contained in the third explanatory note prefixed to the Schedule, be triable by the Courts specified in column 7 of the said Schedule, and that such Courts should be competent to pass sentence in respect of such offences within certain limits. That was not the time or place to enter into a discussion of the construction of those Sections of the Code of Criminal Procedure; but it appeared to him that there was some difficulty in the construction of Section 21, which related to jurisdiction in the sense of giving the Criminal Courts power to try offences; it did not relate to the amount of the sentences which they might impose, and the words "special or local law" appeared singular: but he thought it clear that the expression there must be taken to be limited to the law in force at the time of the passing of the Code, because it would be quite anomalous that the Criminal Courts should prospectively be given jurisdiction to try offences which were not offences at the time. The Bill before the Council, in fact, created a new and particular class of criminal offences. It was true that without any such provision as the 21st

Section of the Code of Criminal Procedure, the highest Courts of Criminal Judicature, that was to say the High Court on its criminal side and the Courts of Session, would have jurisdiction to entertain the trial of any case, even though they were cases in which the criminal offences had been created by some subsequent law, but that did not apply to subordinate Courts, their jurisdiction being limited and arising out of each particular Act. He (the Advocate-General), therefore, thought that it was clear that the words in the Code of Criminal Procedure must be read as limited to the special or local laws which existed at the time at which the Code was passed, and as regards new offences that they would give summary jurisdiction to the Courts of Magistrates and others, only where such jurisdiction was conferred by the special law itself. He, therefore, thought, if only to avoid any possible question, (though he himself believed the Section absolutely necessary) that the Section which he had proposed should be introduced. It was framed so as to include all Officers having criminal jurisdiction down to subordinate Magistrates of the second class, and any Assistant Magistrate or other officer vested with any of the powers of a Magistrate.

The motion was agreed to, and the Bill as amended was then passed.

REGULATION OF CERTAIN TENURES IN CHOTA NAGPORE.

MR. DAMPIER moved that the further Report of the Select Committee on the Bill to ascertain, regulate, and record certain tenures in Chota Nagpore be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

Section 1 was agreed to.

Section 2 was passed after a verbal amendment.

Sections 3 to 5 were agreed to.

Section 6 having been read by the President—

MR. DAMPIER said that at the last meeting he had explained to the Council that since the Bill had been considered, he had had the advantage of consulting personally with Colonel Dalton, and not only with Colonel Dalton but with Colonel Davies, the Judicial Commissioner, and Captain Money, the Deputy Commissioner of the District in which most of the work under this Bill would lie. Honorable Members had had before them Colonel Dalton's Minute, which embodied most of the reasons for the changes which the Select Committee had now made in the Bill. The first material change was that which appeared in Section 6 of the present Bill, corresponding with Section 7 of the former Bill. After much consideration and discussion it had appeared right to the Committee that the limitation of twelve years, which was imposed by the Bill as formerly presented by the Committee, should be extended to twenty years, and therefore that change had been introduced not only in Section 6 but in all the corresponding Sections in which a limitation was fixed, and as each Section came up he (Mr. Dampier) should have to offer a few explanations to the Council. The Select Committee were satisfied that the changes which had occurred within the last twenty years were quite ascertainable and traceable, and that justice might be very properly done by taking that term as the period of limitation

The Section was then agreed to.

Section 7 having been read by the President—

MR. DAMPIER said that in this Section the Select Committee had made considerable alteration. It had been found after all that the certainty which some officers had pronounced to exist as to the original nature of Bhúinhári tenures was not admitted by others, and the moment the certainty was questioned and a doubt expressed

the argument against having an artificial limitation of course fell to the ground. A middle course had now been taken by extending the period of limitation, and providing that the presumption should be that the terms and conditions of the tenures as they existed and could be proved to exist at the earliest period within twenty years, should be presumed to be the rightful terms and conditions of those tenures.

The Section was agreed to.

Section 8 having been read by the President—

MR. DAMPIER said it would be necessary for him to explain the distinction between Section 8 and the two preceding Sections. The preceding Sections referred to the decision of cases in which land was actually found to belong to either the Bhúinhári or Majhahas tenure, that was to say to one of the two tenures which were the subject of this Bill, and regarding the settlement of the conditions of which authority was given to the Special Commissioner by the Bill. Section 6 declared how the Special Commissioner was to deal with questions of possession of such land, and Section 7 how he was to adjust disputes as to the terms and conditions of tenures belonging to one of those classes regarding which he had jurisdiction; but Section 8 referred to those cases in which the question was whether the lands belonged to one of the classes regarding the settlement of which the Special Commissioner had jurisdiction, or whether they belonged to some other class, that was to say, practically, to the class of ordinary rent-paying lands called Rajhahas. In the previous Sections, if the Special Commissioner found the existing state of things not to be an equitable state of things, either as regards possession or the terms on which the tenure was being held, he was to proceed to decide and give effect to what was equitable as to possession or terms as the case might be.

But the moment that the Special Commissioner found that a piece of land did not belong to either the Bhúinhári or Majhahas class, his jurisdiction would be barred with regard to it; he could not say authoritatively that these lands belonged to this or that class, and were liable to be held on such and such conditions. All that he could say was, as provided in Section 8, that they were not lands of the classes with which he had to deal, and that he therefore refused to record them in his Register, and then the parties concerned in such lands would be left to settle the terms and conditions of their tenures in the ordinary Courts and under the ordinary procedure.

Section 8 was then agreed to.

Sections 9 to 12 having been read by the President—

MR. DAMPIER said, that Section 9 took the place of what was Section 6 in the Bill as first presented by the Select Committee, and the Committee had here made a most important alteration. The Section, as it originally stood, gave to the Special Commissioner the power of commuting labor and services to a money payment, only on the condition of both the landlord and the tenant agreeing to such commutation. When the Select Committee originally sent up the Bill, they advisedly put the Section in that shape in order to provoke discussion in the Council; since then they had come to the conclusion that it would be right and expedient to give either party (tenant or landlord) the power of obtaining such commutation of labor and services, even though the other party might not be consenting. Colonel Dalton had in his Note very fully stated the arguments in favor of this measure, and the fact was that the nature of those conditions were now entirely changed; the rendering of the labor and services could not now in any way be made to assimilate in spirit to the services and labor originally contemplated when these tenures were formed. The conditions embraced service of two classes—an agricultural labor, and the service of carrying the

baggage of the Zemindar, and accompanying him in his journeys and expeditions. As to the agricultural labor, the papers laid before the Council showed that this was the cause of constant heart-burning, disputes, and even of riots; that so long as the Zemindars were strong, they exacted labor and services in excess of that to which they were entitled; but as the tenants gradually learnt their power and rights, they resisted these exactions, and, as usual in such cases, went beyond and refused to give the Zemindar even such labor as was his due. Such was the state of things, and the quarrels were going on from bad to worse.

The other kind of labor was that of accompanying the Zemindar on his expeditions; this was probably originally a feudal service rendered to the liege lord, and was probably of the nature of a military service. Now, however, the Zemindar had sub-let his right to such services to out-siders, and therefore there was a great deal of soreness on the part of the Bhúinhárs in the rendering to these even such services as they would willingly give to the Zemindar himself; and not only that, but to accompany one of these outsiders on his journeys now-a-days was a very different thing from the service originally contemplated. Many of the Mukurareedars and Illaquadars belonged to other districts, and in accordance with the letter rather than the spirit of the tenure, required the Bhúinhárs to accompany them to their homes. The case had been put extremely in one of the papers before the Council that there now were certain European Mukurareedars in the province who might, under existing circumstances and conditions, insist on the Bhúinhárs accompanying them to London. The fact was that, under the altered circumstances of the present day, it was quite impossible now to give effect to the original spirit of the labor service conditions, and for these reasons the Committee had presented the Bill in a shape which would give either the Zemindar or the tenant the right to ask for a commutation of such services.

By the following Sections (10 to 12) regarding the procedure under which commutation should be made, the Council would see that assessors would be called in to assist the Special Commissioner in coming to a fair, just, and equitable decision in such matters.

The Sections were then agreed to.

Section 13 provided for a review or further hearing in cases under the three last preceding Sections.

MR. DAMPIER moved the substitution of the words "may if he shall think fit" for the word "shall" in the 7th line, with the object of giving the Special Commissioner a discretion as to the employment of assessors in the re-hearing of such cases.

THE ADVOCATE-GENERAL said that under Section 12 the decision was vested exclusively in the Special Commissioner; the review of such decision ought therefore to be limited to the Special Commissioner, because a review was on the decision itself, not on the opinion of the assessors, and there would be no question as to the facts. Of course, with regard to any further enquiry which might be ordered on appeal, the case would be different. He would, therefore, move by way of amendment the substitution of the following Section in lieu of Section 13:—

"In case any review of any decision under Section 12 may be ordered, such review shall be heard and determined by the Special Commissioner without the assistance of assessors; and in case, in consequence of any order on appeal, a further enquiry into the subject matter of such decision may be necessary, such further enquiry may, if he shall think fit, be heard and determined by the Special Commissioner without the assistance of assessors."

MR. DAMPIER was willing to accept the amendment, which was agreed to.

Sections 14 to 21 were agreed to.

MR. DAMPIER moved the introduction of the following Section after Section 21:—

"No petition presented to the Special Commissioner in pursuance of or under the provisions of this Act, or in pursuance of or

under any rules or orders to be made by the Lieutenant-Governor under the provisions of this Act, in relation to or affecting any matter cognizable under the provisions of this Act, shall be subject to any stamp duty."

The object of the Section was to exempt applications under the Act from stamp duty. The Council were aware that this was a point affecting the revenue, regarding which this Council could not, under the restrictions of the Indian Councils' Act, legislate without the permission of the Governor-General. Application for such permission had, however, been made, and the necessary permission had been received, the letter from the Government of India on the subject being amongst the annexures to the Bill.

The motion was agreed to.

Section 22 was agreed to.

Section 23 related to the effect of a judgment of the Civil Courts in suits commenced after the passing of the Act.

MR. DAMPIER said this was a new Section, and the reason for its introduction was this. The object of the Bill was to bar the jurisdiction of the Civil Courts in matters regarding which jurisdiction was given to the Special Commissioner by the Bill. The probability was that operations under the Act might continue for two or three years: thus any one who for any reason did not like the procedure of the Bill, might immediately institute numbers of civil suits for the purpose of avoiding the equitable considerations on which these matters were to be decided under the present Bill. It might so happen that the Special Commissioner on arriving at a village might be told that there was nothing for him to do, as one or other of the parties had, immediately the Act was passed, instituted a number of suits, and had caused all matters to be decided according to dry law. To avoid this the present Section had been introduced, and had been so framed as to give any party the benefit of any relief he could got from the Courts during the time between the passing of the Bill, and the Special Commissioner taking up the enquiries in any particular place. If a man had been ousted from his Bhúinhári tenure, it would be very hard to say that he could not obtain redress from the ordinary Courts at once, because a Special Commissioner would visit his village two years hence. Therefore the Section, as it stood, provided that any person might get a decree in the regular Courts, to have effect up to the time that the Special Commissioner might come and try the case according to the provisions of this Bill, and then the questions would be settled under the equitable provisions therein provided.

Section 23 was then agreed to.

Sections 24 and 25 were agreed to.

In Section 26, on the motion of Mr. Dampier, the short title of the Act was amended from "The Chota Nagpore Tenures' Registration Act, 1868," to "The Chota Nagpore Tenures Act, 1869."

The preamble and title were agreed to, and on the motion of Mr. Dampier, the Bill was passed.

The Council was adjourned to Saturday, the 6th February

By subsequent orders of the President the Council was further adjourned to Saturday the 13th March.

Saturday, 13th March, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

The Hon'ble Ashley Eden,	H. H. Sutherland, Esq.,
A. Money, Esq., C.B.,	Koomar Satyanund Ghosal,
A. R. Thompson, Esq.,	Baboo Issur Chunder Ghosal,
H. Knowles, Esq.,	and
Baboo Peary Chand Mittra,	Baboo Chunder Mohun Chatterjee.
T. Alcock, Esq.,	

MR. MONEY took the oath of allegiance and the oath that he would faithfully fulfil the duties of his office.

MOFUSSIL POLICE.

THE HON'BLE ASHLEY EDEN moved for leave to bring in a Bill to amend the constitution of the Police Force in Bengal. He said he would not take up the time of the Council by explaining at length the reasons which led to the introduction of this Bill. The Bill and papers had been in the hands of Hon'ble Members, and the Bill was so simple that it explained itself. By Section 2 of the present Law (Act V. of 1861) the whole of the Provinces under the control of the Lieutenant-Governor were formed into one general Police District. Not long after the passing of that Law it was found practically impossible that the Police in the outlying Province of Assam should be efficiently controlled by the Inspector-General of Police for the Lower Provinces, and they were therefore placed under a Special Deputy Inspector-General upon whom were conferred the powers of the Inspector-General. The arrangement, however expedient, was not altogether legal, and had in consequence been modified; and it was now found necessary to revert to that practice so far as to place the Police directly under the control of some Officer on the spot. It was therefore determined to bring in a Bill to enable the Lieutenant-Governor to vest the control of the Police in Assam under the Commissioner of the Division, or any other Officer His Honor might think fit. But as hereafter it might be thought expedient to deal in the same way with the Police in parts of the country similarly situated, which, from the nature of the country and the frontier tribes surrounding them, required a Police under a different organisation to that of the rest of the country, and which from their distance and the difficulty of communicating with them, could not be efficiently supervised by one Inspector-General of Police, power had been given to the Lieutenant-Governor which would enable him from time to time to separate any other portion of the Provinces under his control from the general Police District, and place it under any Officer whom he might appoint.

The motion was agreed to.

THE HONB'LE ASHLEY EDEN then applied to the President to suspend the Rules for the conduct of business to enable him to move that the Bill be read in Council.

THE PRESIDENT having declared the Rules suspended—

THE HON'BLE ASHLEY EDEN moved that the Bill be read in Council. In doing so he said the Bill consisted of only three or four Sections, the first of which repealed Section 2 of Act V. of 1861, so far as it related to the Provinces under the control of the Lieutenant-Governor of Bengal; the 2nd Section gave the Lieutenant-Governor power to form any portion of those Provinces into a general Police District, and to appoint some person to exercise the powers of an Inspector-General in such District; the 3rd Section declared that the entire Police establishment in any such District should be deemed to be one Police Force; and the 4th Section provided that the Police in any one general Police District might be employed in any other general Police District.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of Mr. Money, Mr. Thompson, Baboo Peary Chand Mittra, and the mover.

The Council was adjourned to Saturday, the 27th instant.

By subsequent orders of the President, the Council was further adjourned to Saturday the 1st May.

Saturday, 1st May 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., Advocate-General,
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.,
A. Money, Esq., C. B.,
A. R. Thompson, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Koomar Satyanund Ghosaul,
Baboo Issur Chunder Ghosaul,
and
Baboo Chunder Mohun Chatterjee.

MOFUSSIL POLICE.

THE HONBLE ASHLEY EDEN moved that the Report of the Select Committee on the Bill "to amend the constitution of the Police Force in Bengal" be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in form recommended by the Select Committee.

The motion was put and agreed to.

Sections 1, 2, 3, 4, 5, and 6, and the Preamble and Title were severally read by the President, and the question put as to each that it stand part of the Bill.

The Sections, Preamble, and Title were severally agreed to.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. He said, he would wish first to state the circumstances under which the Bill had been so long in the hands of the Select Committee, in explanation of the seeming delay in the submission of the Committee's report. The Bill was introduced towards the end of July last, at the close of the then session of the Council. Some meetings had been held and discussions took place on the general features of the Bill, but no real progress could be effected in consequence of the resignation and retirement of one or two of the Members on the Select Committee, and it was not till the opening of the new session of the present year, and the appointment of new Members to the Committee, that the consideration of the Bill could be properly taken in hand.

He had the honor, in introducing the Bill, and again on the occasion of its being read in Council, to explain the objects and reasons for which the Bill was introduced. The Bill was introduced simply for the transfer of the adjudication of suits between landlords and tenants from the Revenue Courts, where they were now triable, to the Civil Courts of the country; and the discussions which then took place in connection with certain reports received from different sources, led to the conclusion that the principle on which the Bill was founded was a right and proper one, and might be adopted with benefit to the large class of persons interested in such suits, and for the general interests of the public service. He did not now intend to recapitulate the grounds upon which that principle was acceded to, beyond stating simply that the general tenor of the reports since received almost with unanimous consent supported the propriety and wisdom of the legislation now contemplated, and its general acceptance by the community most interested in its adoption.

In submitting to the Council now the report of the Select Committee and the result of their deliberations, he would prefer, at this stage of the enquiry, to confine himself rather to the consideration of the two main principles which the Committee had adopted in preparing this measure, and would reserve to himself the privilege of addressing the Council again on those details which would be more appropriately discussed as each Section, upon which explanation might be necessary or on which controversy had arisen, came up for consideration.

He (Mr. Thompson) might then at once state that in their deliberations upon the measure the Select Committee had determined to adopt the two following

rules: first, that in consideration of the objects with which the Bill was referred to them, they should decline to import into it any change or reform of the substantive provisions of Act X of 1859; and secondly that in transferring the adjudication of these suits from the Revenue to the regularly constituted Civil Courts, they should adopt, generally, the Code of Civil Procedure under Act VIII of 1859 as, on the whole, the best adapted, with some very slight modifications, for the trial of the class of suits which the Civil Courts would now have to decide.

It was not without opposition even in the Select Committee that the first principle of action had been maintained, and from the concluding paragraph of the report of the Committee it would be seen that certain of the Members were still of opinion that the substantive law of 1859 required modification, and they have reserved to themselves the right of proposing such modifications when the Bill came before the whole Council. Whatever definite propositions these Hon'ble Members intended to make would be properly considered as they came before the Council, and it would be useless to anticipate the proposals which, he understood, would be submitted at the proper time.

Outside the walls of this house, however, suggestions had been pressed upon the attention of the Select Committee a reference to which, he (Mr. Thompson) thought, might rightly be introduced here. Objections to the Bill as it stood had been pressed upon the Council from two sides with a view to the alteration of the existing substantive Law. There were those who advocated change in the interests of the ryots; and there were those who did so on the ground that the present law operated with hardship against the right of the landlord.

Now it would, he believed, lead the Council to a very unprofitable departure from the actual work which lay before it, if it were to enter with any minuteness into a consideration of questions which the advocacy of the ryotwary interest, if he might so term it, had brought before the Council in the annexures to this Bill. He had had an opportunity of conversing a short time ago with a gentleman who was himself a large ryot, and, who therefore, took great interest in the Bill from a ryotwarry point of view, and who apparently held very advanced opinions on the subject. Both in writing and in conversation this gentleman had very confidently affirmed that the substantive provisions of Act X of 1859 were in direct violation of the principles of the permanent settlement; that the ryots were the exclusive proprietors of the soil, and that the zemindars were nothing more or less than contractors with Government for collecting the land revenue; and holding these views he had expressed his wish that the present opportunity should be taken to amend the law, with a view to legislation on the basis of the principles which he maintained and enunciated. The opinions which this gentleman advocated had appeared in annexures to the Bill before the Council, and he (Mr. Thompson) would refer to them simply as showing the kind of discussion into which the Council would be led and the nature and extent of the investigations to which the Council was invited, with the view of framing provisions to meet those views. He (Mr. Thompson) held in his hand certain papers which purported to give, under separate heads, the form which legislation on this subject should now take, and with the permission of the Council he would refer to certain portions of this paper.

The chief point upon which stress was laid was that the Pergunnah rate was the only one that could be legally used in all suits for enhancement of rent. With this view it was urged that in all enhancement suits "the established usages and rates of the Pergunnah or District in 1793" were the only points to which the Court could look. It was urged that "a right of occupancy should carry fixed rates," that a "right of occupancy should be declared heritable and transferable," that there should be no ejectment in any cases of arrears

of rent, that the Zemindar should pay the whole expense of the ryots when contesting a suit for enhancement of rent, even if he should gain the suit, and, lastly, what appeared to him (Mr. Thompson) the most striking proposition, that Zemindars harassing their ryots for enhancement of rent above the Pergunnah rate, should be fined in the first instance, and deprived of the management of their estates in the second.

He (Mr. Thompson) had never contended that the substantive provisions of Act X. of 1859 were not open to reform and change. The time might come when such a proposition might be advantageously entertained; but he did maintain that that Act conferred very much larger and greater privileges on ryots than were ever enjoyed by them before that law was passed, and that proposals such as those to which he had referred did not fall within the scope of their present deliberations. On the other hand, with reference to the Zemindar's position under the Act, suggestions had been made and pressed on the consideration of the Committee, which he thought he might bring to the notice of the Council. One gentleman holding an official position was of opinion that the system which prevailed of forcing the landlord to proceed by suit for the recovery of his arrears of rent, was bad in principle and unjust to the landlords. He considered that such a principle did not prevail in any other country civilised or uncivilised: He said:—

"Legislation in this country was always more or less an anomaly, from the fact of the rulers being far in advance of the people in intelligence and civilisation. We will not give the people the laws which they would frame if we were not here, because in our judgment they would be rude and barbaric; nor will we give them the laws which pass current in our own country, because we consider the people are not sufficiently advanced to receive them. The rent laws of this country are an illustration of what I say. If the people were left to themselves, we may be sure that the Zemindars would invent a very speedy and summary method for collecting their rents: a method which in a mitigated form was in force in some Districts before the passing of Act X. of 1859."

Now allowing that this gentleman had had a very large experience of the litigation under the rent laws since the passing of Act X. of 1859, he (Mr. Thompson) must deny to him any practical experience of the "mitigated form" in which litigation had prevailed before the passing of that Act. He did not know if those suggestions of leaving to Zemindars their own summary method of realising their rents had ever been seriously entertained; but they certainly were not adopted in the Bill before the Council; and the consideration of such an idea would probably carry the Council back to a period not of Act X. of 1859 or of what preceded Act X., but to a date anterior to the permanent settlement, and before the English came into this country. If the facts before the Council were that we had on one side landlords with absolute proprietory rights in the soil, and on the other tenantry holding on at the mere will of their superior, interference on the part of Government would in nearly all cases be unnecessary. We should perhaps have neither to provide Courts to try rent cases, nor codes of procedure for their guidance, on the ground that in such a state of things self-interest would always be a sufficient inducement for the settlement of disputes, and would adjust the position of parties in a far more satisfactory manner than any laws or regulations could effect; but it was notorious to every one who had been a month in the country that the facts were not so. There was probably not a Zemindar in this part of the country whose estates were not charged with an infinite number of subordinate tenures more or less of a permanent character; and the known existence of this immense variety of subtenures, most of them conveying some beneficiary interest in the land, had always necessitated the intervention of the Legislature to define those rights and to regulate the manner in which disputes concerning them should be decided.

The enactment of Act X. of 1859 was a measure passed by the Legislature with reference to such questions. It was a measure passed after much deliberation

and enquiry by the ablest men in the country; and under the instructions under which the present Committee had been acting, it was considered inexpedient and unnecessary to attempt any revision of the substantive provisions of that law. They had considered that the circumstances and objects of the Bill which was now before the Council, were merely to transfer the adjudication of suits hitherto triable by the Revenue Courts to the Civil Courts, and to provide a procedure which would meet the requirments of such a transfer. The Committee had, therefore, limited their consideration to the preparation of a Bill which in securing this object should consolidate the law as contained in Act X. of 1859, and the laws amending that Act; and as regards the procedure for such suits they had thought the wisest course was to take the whole procedure of Act VIII. of 1859, and to apply it to this class of suits. It had been before observed that the Civil Procedure Code and Act X. of 1859 were passed almost simultaneously, and it was generally thought that the difference in the procedures of the two codes, where they were found to exist, were with a tendency to greater dispatch of cases under the later law. The Committee had gone, however, very carefully through the provisions of the two Acts, and had arrived at the conclusion, fortified by the opinions of those best competent to advise, that the general provisions of Act VIII. of 1859, with certain slight modifications, would amply satisfy the requirements of legislation under this Bill, and that the advantages of a single Code of Procedure for all cases before the Civil Courts would immensely preponderate.

While on this subject he might allude to a paper referring to the procedure to be adopted, which only recently came to the hands of the Council. It was only yesterday he had received from Mr. Bell, the Officiating Legal Remembrancer, a paper containing certain suggestions for the introduction of what he might describe as a Bill within the Bill: that was to say, apart from the regular procedure for other cases, a summary procedure with reference to undefended suits. The Committee had received a great many criticisms from Mr. Bell upon the Bill, and he was glad to be able to say that they had generally found that the opinions this gentleman had expressed coincided with the results of their own deliberations; but on this point, as regards the necessity of a summary procedure for a certain class of cases, he was certainly bound to differ. On more than one occasion Mr. Bell had pressed this matter upon their consideration. It would be seen in the annexure No. 15 to the Bill that the plan which was there advocated was so described:

> "My own idea is that landlords ought to be able to recover their rents in undisputed cases by a summary process similar to that in force for the realisation of sums of money due under registered bonds."

He (Mr. Thompson) had never been able to ascertain on what principle that recommendation was made. He did not see any analogy between the recovery of arrears of rent which were fluctuating and uncertain, and the recovery of the amount due on a registered bond. The procedure as regards bonds was something as follows:—If A. owed B. a sum of money, B. could take his debtor before the Registrar and in the presence of that officer a record of the agreement might be made that the amount secured by an obligation then specially registered might be recovered in a summary way. Within one year from the date on which the amount became payable such an agreement might be enforced under the provisions for the enforcement of decrees by the Civil Procedure Code without the institution of a suit to establish the debt. There it would be seen the sum due was a fixed amount, and the debt was admitted and recorded under special formalities before a registering officer. But in the case of arrears of rent, there would be no certainty as to the amount due, the debt might be one of two of three years' standing, and the provisions of the Registration Act as to the admission of the arrear by the defaulter would not be applicable. Mr. Bell, however, had come before the Committee

again, in the paper just received, for a summary procedure regarding undefended suits, for which he had given us certain draft Sections. He (Mr. Thompson) drew attention to the paper, because as it had only been sent in yesterday, he was not sure that Hon'ble Members were aware of its existence. The plan here was to substitute a notice of demand in the place of a summons, returnable in ten days, and it was possible that this summary procedure might be adopted with advantage in many instances where there was no dispute, and the tenant might come in at once and pay the amount demanded. But it was impossible to say before hand what cases would be undisputed, and where there was a dispute between the parties, the time given was too short a notice to allow for objections. This, however, was a matter of detail which might be amended. But he (Mr. Thompson) was opposed to the principle. It would be in the knowledge of the Council that one of the chief difficulties in the Mofussil was as regards the proper service of all notices. The agency employed for that purpose was not a very satisfactory one, and there were always means by which the peons engaged in this duty could be brought under the influence of the party serving the notice. When the summons was sent out there never was much difficulty in having it returned as served, though the party for whom the notice was intended had never heard of the matter. Again, in suits for arrears of rent in very many cases third parties were interested, and wished to appear, and in this summary procedure it was not exactly known how third parties were to be brought before the Court. What, he might ask, was the object set before the Council in all these propositions about summary proceedings? He (Mr. Thompson) supposed it was to avoid something of the expense and delay involved in the technicalities of a regular suit. It seemed to him, however, that there was not much gained by this summary despatch in the earlier stage of the proceedings, for the rapidity of action in the first instance was no set-off to the longer litigation which in most of such cases invariably ensued to set aside the summary decision by a regular formal enquiry. What had been the practical experience on this point? The summary procedure was gone through; from that decision an appeal lay to the Commissioner of Revenue; and a party dissatisfied by such proceedings informally carried on, had always the right of bringing in a regular suit to contest the decision. The consequence was that the case was gone through by summary procedure, and then went back to the regular Courts to be decided in the regular manner. If the evil was a serious one under the present arrangements, it would be enhanced very much by the proposed transfer of all these suits to the Civil Courts. For here the summary procedure would be before the Civil Courts as well as the regular suit. There would be the same evidence and documents produced when the case was tried in a summary manner, and afterwards when it was disposed of in the regular way, and both proceedings before the same officer. If despatch were one of the principal objects to be kept in view, he (Mr. Thompson) believed that they had an almost absolute assurance that the disposal of cases by Moonsiffs would be very much quicker than it had hitherto been before Deputy Collectors. Revenue Officers in the Mofussil, as every body knew, had other duties besides the trying of rent cases: they were engaged for many months in the year upon field duties which took up the whole of their time. There were settlement cases, adjustment of boundary disputes, resumption proceedings, and other matters of importance which could only be disposed of while the cold weather lasted. It was impossible that cases on the Act X. file could be kept down in the proper manner while the Revenue Department was so occupied; and the consequence was that during those four or five months during which Collectors were going about the District in the discharge of their executive duties, the

Mr. Rivers Thompson.

number of cases under the rent laws accumulated very largely and were left to be disposed of till the Collector returned to more sedentary duties. Now in the Moonsiffs' Courts there were officers who had none of those peripatetic functions: they were stationary all the year round, and admittedly of a class better fitted by training and long experience to cope with the kind of cases which it was proposed to make over to them. He believed that six weeks would be the longest time occupied by the Civil Courts in the disposal of any cases under this Bill, and he did not think that greater despatch had been secured under present arrangements. He had said before that a definite proposition for the introduction of a summary procedure in connection with any class of cases under this Bill had not come before the Select Committee for decision. As he had already explained, Mr. Bell's present propositions had been received too late. He had no doubt, however, that if such a procedure was considered advisable, the question would receive at the hands of the whole Council, before whom the Bill now was, a fair consideration, and that upon this and other important details the conclusions at which the Council arrived would be satisfactory and just.

BABOO ISSUR CHUNDER GHOSAL said, he begged permission to speak a few words on the Bill, before the Council commenced proceedings on it. He had been told that the substantive law of Act X of 1859 should not be interfered with, to which principle he fully agreed. But owing to the defective nature of the language used in that Act, certain rulings had been made by the High Court, which had not only made portions of that law inoperative, but had in fact scattered to the four quarters of the globe the original intentions of the Legislature. He, therefore, with the view to satisfy himself on the subject, addressed a communication to the Secretary to the Government in the Legislative Department asking for certain information regarding those rulings. He was afraid, however, that that letter was informal, for he received no reply to his communication. He therefore, now moved, under the 14th Rule of the Council, that a synopsis of the rulings of the High Court on Sections 6, 8, 10, 15 and 17 of Act X. of 1859 be furnished to the Council, which would not only enable him, but also other Hon'ble Members, to understand the actual state of the law at the present moment. He did not propose any change in the substantive law; all that he wished was that the language of those sections should be so framed that in future no doubts should arise in the minds of the Judges and Pleaders as to the meaning of the law.

THE PRESIDENT said, he did not think the Returns asked for were such as the Council could properly be asked to give.

The motion was then put and agreed to.

The consideration of Section 1 was postponed.

Sections 2 to 5 were agreed to.

Section 6 related to the right of occupancy of a ryot cultivating or holding land for twelve years.

BABOO PEARY CHAND MITRA said, a ryot might hold land for other purposes than that of cultivation. The words "cultivated or held" would not include land on which a dwelling-house was erected, and which was applied to no other purpose. It was ruled by the High Court that the tenure of an occupancy ryot was not necessarily heritable and transferable. To make the meaning of the Section quite clear, he (Baboo Peary Chand Mittra) would propose the insertion of the words "for agricultural or for any other purposes" after the word "land" in line 2, and of the words "and the same shall be heritable and transferable" after the word "Section" in line 16.

MR. DAMPIER said, the suggestion on which the present motion was based was contained in the printed papers circulated to the Council only yesterday. He did not think that the Hon'ble Member was right in asking the Council to decide on a question of this kind on the moment. It was a motion notice of which ought to have been circulated to the Council during the week.

THE PRESIDENT said, he would have no objection to postpone the consideration of the Section if any Hon'ble Member desired it.

THE ADVOCATE-GENERAL said, he understood that the object of the amendment was to make a substantive declaration regarding the rights of occupancy ryots. But what that had to do with the object of the present Bill he was at a loss to conceive. The Bill was now before the Council for consideration of the clauses as it was sent up by the Select Committee. It had been introduced as a Bill for amending the procedure in the law of landlord and tenant—as such the leave of the Council was given for its introduction, and as such it was read in Council and committed. He (the Advocate General) must protest against any attempt on the discussion of the clauses of the Bill as sent up by the Select Committee, to ventilate theoretical suggestions as to what the substantive law ought to be. What was now brought forward at this stage in the progress of a Bill having a specific object, was no more than the expression of certain theoretical views. They might be right, they might be wrong; but this was not the time or occasion on which they should be brought forward. The circumstance that a Bill to amend procedure was before the Council for the settlement of the clauses, ought not to be considered as "affording an opportunity" (as it was said to do) for the introduction of suggestions as to the alteration or improvement of the substantive law. It might be that the substantive law of Act X. of 1859 required consideration and amendment. But to enter into such considerations now, would, as it seemed to him, do away with the benefit of the existing Rules with regard to the obtaining leave to introduce, and the reading of a Bill before it was submitted to a Select Committee.

THE PRESIDENT said, the Bill was a Bill solely to amend the procedure in suits between landlords and tenants, and it was only for that purpose that the mover had obtained leave to bring in a Bill; and therefore it was not competent to any Member to introduce a provision that would alter the substantive law.

BABOO PEARY CHAND MITTRA said, by this Bill Act X of 1859 would be wholly repealed. He held in his hands the opinion of the Chief Justice on the subject of the amendment of that Act. The Chief Justice said:—

"It is not for us in this place to comment upon the Acts of the Legislature or to suggest amendments of the law. We have merely to administer it as we find it. But we think that we may fairly point to this case as an example of the difficulties which have been created by some of the provisions of Act X of 1859, and of the vast amount of litigation, harassing both to landowners and ryots, which must necessarily arise unless that Act be amended."

As he (Baboo Peary Chand Mittra) had said before, this Bill proposed to repeal the whole of Act X of 1859; and although he was aware that the Bill was only a Bill of procedure, yet if the opportunity were taken to make such substantive changes in Act X of 1859 as were called for, the evil would be corrected, and a vast amount of litigation would be prevented.

BABOO ISSUR CHUNDER GHOSAL said, he would refer the Council to a letter of the Judge of Patna with regard to the operation of this Section in that District. That officer had stated that it had been held by the Courts, that owing to a local custom an occupancy tenure in that District was not transferable. He (Baboo Issur Chunder Ghosal) wished to know if that was the intention of the Legislature which had enacted Act X of 1859? He also wished to know what was the age of this local custom? The Act became law in 1859, and if this local custom had existed then, the law should have overridden the custom, because there was nothing in the former to bar such a course. Mr. Ainslie was an officer of large experience both as a Judge, and Commissioner for taking land for Railway purposes, and he had not failed to deprecate such a construction of the law. He (Baboo Issur Chunder Ghosal) was, however, afraid that there was a fatality which attended in this country the grant of any privilege or right to any particu-

lar Section of the community by the Government. These could never be perfectly or peaceably enjoyed; something or other was sure to arise to mar the original intentions of the Government. It was, therefore, with a view to know whether the original intentions of the Legislature had been kept *intact* by the construction of the law, that he had moved for the papers which the Hon'ble the President had thought fit to refuse.

He (Baboo Issur Chunder Ghosal) would now offer a few remarks on the principal amendment proposed by his Hon'ble friend. The proposition before them was that a person holding land for other than agricultural purposes might enjoy the rights and privileges of an occupancy ryot. Certainly this could never have been the intention of the Legislature which framed the law of 1859. The amendment was in direct opposition to the spirit of the law, and therefore he (Baboo Issur Chunder Ghosaul) would oppose it.

The right of occupancy was a new one, and it was enacted for the protection of agricultural squatters, and their descendants whom some of the unprincipled landlords were in the habit of harassing frequently for their own purposes. This right, however, should never be extended to those who were not agriculturists, and derived not a direct but an intermediate benefit from the land. These latter were mere speculators in land, who would go on developing the system of sub-tenures, which was the bane of this country, and for the creation of which the natives were always twitted. But the wording of the Section could be so construed as if the Legislature itself wished to foster the system of sub-tenures under certain contingencies. *Vide* High Court Ruling, Brindabun Chunder Chowdhery, 4th January, 1864). He (Baboo Issur Chunder Ghosaul) would oppose the amendment.

THE HON'BLE ASHLEY EDEN said that very possibly an amendment of the law of landlord and tenant might be required; but such a measure had nothing whatever to do with the subject before the Council. This was a Bill for regulating the procedure in suits between landlords and tenants, and not for defining their mutual relations. If Act X of 1859 was to be amended, it might be done by a separate Bill after leave obtained; and the only Bill for the introduction of which leave had been obtained was one strictly confined to altering the procedure, and substituting the agency of the Civil Courts for that of the Revenue officers. That leave had not been obtained, and the present discussion would, therefore, uselessly take up the time of the Council. Their discussion should be strictly limited to questions of procedure.

MR. SUTHERLAND said, he thought the object of the Hon'ble Member's amendment was to avoid obscurity, and to settle the meaning of the Section definitely. The Council had already altered the wording of the substantive law by including in Section 2 the boundaries of the land amongst the particulars which should be specified in a pottah. Although he was not prepared to support the Hon'ble Member's amendment, he did not think it trenched on the substantive law to make a verbal amendment where there was doubt or ambiguity.

MR. THOMPSON said, the definite purpose of the amendment was for a declaratory Section to the effect that the rights of an occupancy ryot were transferable and heritable, and the Hon'ble Member went on the decision of the High Court in support of his amendment. The High Court only declared the law as it existed; but if in the settlement of the clauses of this Procedure Bill we attempted to bring each of the Sections into conformity with published decisions of the High Court, we should be undertaking a measure beyond the objects upon which the Bill was founded. He believed that the High Court held that the heritable and transferable nature of a right of occupancy must be governed by local custom. If local custom did not show that it was of the character delared, he did not think it would be right for the Council to say that it was.

BABOO PEARY CHAND MITTRA then, with the leave of the President, withdrew his motion, and the further consideration of the Section was postponed.

Section 7 was agreed to.

Section 8 declared to what pottahs ryots having rights of occupancy were entitled.

BABOO ISSUR CHUNDER GHOSAL said, the language of this Section was clear, and the Section was, he thought, framed according to the principles of the English law on the subject. In England, he believed, people occupying lands as tenants-at-will were liable to be ousted at the pleasure of the landlord after six months' notice. The procedure there was, he thought, a suit of ejectment, with the alternative of an enormous rent if the tenant chose to remain. But in this country, with the same procedure, the Courts had ruled otherwise, that is to say, it was thought unjust on the part of the landlord to claim an enormous rent, or give effect to the alternative of an ejectment. He would refer to the Full Bench Ruling in the *Weekly Reporter*, Vol. X., p. 33. He would also call the attention of the Council to the remarks made on this Section by his talented friend Baboo Unoocool Chunder Mookerjee of the Appellate High Court, in paper No. 14. The remarks were to the following effect:—

"This Section has been made a dead letter "by the decisions of our Courts, which have "gone on to hold that only fair and equitable "rates can be decreed by the Court, even in "the case of ryots not having rights of occu-"pancy."

Now, he (Baboo Issur Chunder Ghosaul) would beg leave to ask the Hon'ble President, if he thought that was the result contemplated by the framers of the law? The mischief in this instance had arisen from there being no separate procedure under this Section. While the law in England provided a notice of six months for the ejectment of non-occupancy tenants, the law in this country might be said to be *nil* on the subject. Consequently the general Section 13 was made to do duty here, which provided notice for a month only, and hence "the fair and equitable" principle had pervaded the working of this as well as of every other Section which required the procedure of a special notice, but where such provisions had not been made; and hence the failure of justice. He (Baboo Issur Chunder Ghosaul) would therefore ask whether a non-occupancy ryot, who had been brought into existence in this country within the last ten years, should be allowed to enjoy more privileges and greater rights in this country than he obtained in England? With regard to the future, he thought the prospects of summarily ejecting such ryots, even by a change in the procedure, were more gloomy than ever. Because by the present Bill all summary powers enjoyed by the landlords under Section 25 of the old law and the procedure under it, were omitted, and he could only foreshadow the result from the ruling of the Chief Justice in the case of Soful Khan (*Weekly Reporter*, Vol. IX p. 123.) He would therefore beg to propose that the consideration of this Section be postponed till the question of the summary power of landlords be disposed of by the Council.

After some conversation, the further consideration of the Section was postponed.

Section 9 was agreed to.

Section 10 provided that, if on the trial of a suit for the delivery of a pottah the parties did not agree as to the time for which the pottah should be granted, the Court was to fix the time.

BABOO ISSUR CHUNDER GHOSAL said he felt himself in a delicate position in expressing his views with reference to this Section. The language of the Section was very clear; it was not like that of Section 6 which could be construed otherwise, and again it was not like Section 8 which wanted a procedure of its own. Here he was sorry to say that the administrators of the law were more at fault than those who had made the law. In the first place the provision for the tender of a pottah before kuboolyut was asked from the ryot, and which the law indicated, had been altogether ignored and thrown overboard by the High Court. In the second place it had been ruled that, if in a suit for kuboolyut the plaintiff failed to

prove to the minutest fraction the rate of rent he claimed from his ryot, his plaint should be at once dismissed. And in the third place it had been further ruled that to effect an increase in the rental, the landlord should proceed by a regular suit for enhancement and not by a suit for kuboolyut. He (Baboo Issur Chunder Ghosal) was at liberty to confess that these rulings were not at all satisfactory. The first ruling he thought was beyond the competency of the Court to make, and the second and third rulings were against the custom and practice of the country for ages past. The terms used by the natives for different kinds of enhancement were "*Jurreeb Bessee*," "*Har Bessee*" "*Nerrick Bessee*," and "*Koboolyut Bessee*;" consequently the latter rulings had taken away a material right from the landlords. The facts of the case which gave rise to these rulings were simply these. Certain landlords in one of the Eastern Districts sued certain ryots for kuboolyut at the rate of Rs. 20 per kanee, whatever measure that might be. The first Court gave decree for kuboolyut at the rate of Rs. 12 per kanee. The plaintiff appealed to the Judge, who increased the rate to Rs. 16 per kanee. Against this increase the defendant appealed to the High Court, where, amongst other matters, it was found that during all these proceedings the plaintiffs had set their faces against granting pottahs to the defendants at the rate decreed to them by the lower Court. This of course, was highly unreasonable and unjust on the part of the plaintiffs, and the High Court was perfectly right in feeling indignant at such conduct, bnt instead of dismissing the claims of the plaintiffs to kuboolyut, in order to right a particular case, the Court at once laid an embargo on suits for kuboolyut generally. Perhaps, after all, the plaintiffs were not so much to be blamed—the previous ignoring by the Court itself of the provision of a tender of a pottah might have led the plaintiffs to the conclusion that they were not bound to exchange a pottah for the koboolyut they sued. He (Baboo Issur Chunder Ghosal) therefore proposed that, under these circumstances, the consideration of this Section be postponed until he could collect further information on the subject. It was a great mistake to suppose that a kuboolyut could be had from the ryot in all cases for the mere asking for it. If such had been the case, where was the necessity for legislating on the subject?

MR. RIVERS THOMPSON said, if the Council was to take up every Section of Act X of 1859 on which there had been a ruling of the High Court, we should have to revise the whole of that Act. The High Court was the proper authority to declare what the meaning of the law was, and we must assume that the High Court had correctly interpreted the law.

The Section was then agreed to.

Sections 11 to 13 were agreed to.

Section 14 related to the enhancement of the rents of ryots holding without or after expiry of their written engagements.

MR. MONEY said, he would premise the few remarks he had to make, by saying that he agreed with the majority of Hon'ble Members that it was desirable that no change should be made by this Bill in the substantive law. The Bill appeared to him to be simply a Bill of procedure, and the amendment which he was about to move was with reference to matter of procedure, *viz.*, as to the serving of notices under this Section. He believed the substantive law in this Section was that the notices should be served, and he did not propose any departure from that plan, although he preferred the system of the Oude Rent Law. But the change he recommended was simply a change of procedure, *viz.*, as to the time at which those notices should be served. The present Section of the Bill was exactly the same as Section 13 of Act X of 1859. He believed that ever since the passing of Act X of 1859, every man who had had anything to do with the working of the Act must have had before him, in many instances, cases of hardship, both under this Section and under the corresponding Section of notice of relinquishment

of land by a ryot. The hardship had been both on the ryot and the zemindar. He thought he might support that statement by one or two quotations. He found that the Revenue Board when reporting two years ago on the Oude Rent Bill wrote as follows:—

"The judges of the High Court were upon one point almost unanimous, and that was that the notices of ejectment and enhancement ought to be served 6 months at least before the end of the agricultural year. There can be no question of the fairness of such a rule."

In the minutes on Act X of 1859 made by the greater number of the Judges of the High Court, the following opinions were expressed:—

The Chief Justice said:—

"I would enact that a ryot who shall have held without an engagement for a fixed term, shall not be bound to quit unless he be served with a notice six months at least before the end of the current agricultural year, requiring him to quit at the end of such year."

Mr. Justice Sumboonath Pundit said:—

"With regard to the proposal for repealing Sections 6 and 76, and for amending Sections 17 and 19 of Act X of 1859, and also as regards the proposals of new provisions, I entirely concur with the Chief Justice."

Mr. Justice Kemp said:—

"The period within which the ryot is permitted to resign his tenure, as also of the notice under Section 13, should be enlarged."

Mr. Justice Seton-Karr said:—

"I entirely concur with the learned Chief Justice in thinking that, under Section 19, the notice of relinquishment of land should be given, not in the last month of the Bengalee year, but six months before the expiration of the current year, and the same principle and period should be extended to notices of enhancement given by the Zemindar under Section 13."

Mr. Justice E. Jackson said:—

"If, however, the present law as to the notice of enhanced rent is to be retained, the Act should require that it shall be served at least six months before the commencement of the year in which the landlord claims to receive that rent."

Under the old law, Regulation V of 1812, the notice was required to be served in the month of Jet for the ensuing Fusly or for the current Bengallee year. This gave three full months in Districts where the Fusly year prevailed, but no margin of time in Districts where the Bengallee year was current. Act X of 1859, however, required these notices to be served in or before the month of Cheit, and the consequence was that, whereas in Districts with the Fusly year the ryot got five months' notice, the law in the generality of the Districts, where the Bengalee year prevailed, did not allow one day, as the notice might be served on the last day of the year. There could be no question of the singular hardship of the law. The ryots in most cases would have ploughed and sowed their lands before the service of the notice. But they must give up their tenures and the fruits of their labor, or accept the conditions of the enhancement. The ryot had no choice; he found the surrounding lands already occupied, and he had but one alternative before him, which was to accept the enhanced terms demanded.

On the other hand, when the ryot gave notice of relinquishment at the end of the year, the hardship was on the zemindar, who had not time to make arrangements for a fresh tenant. He (Mr. Money) thought there could be no question that the provision acted with singular hardship both on the ryot and the zemindar; and he did not think any ryot or zemindar could object to the amendment proposed, which went on the principle that three months' notice should be given to the ryot in cases of enhancement of rent, and to the zemindar in case of relinquishment of land. He would, therefore, move the substitution of the words "in Districts or parts of Districts where the Fuslee year prevails, in or before the month of Jet, and in Districts or parts of Districts where the Bengallee year prevails in or before the month of Poos," for the words "in or before the month of Chiet," in lines 13 and 14.

BABOO PEARY CHAND MITTRA said, the alteration proposed was an excellent one, inasmuch as it did not take the ryot by surprise, but gave him sufficient time to make arrangements for himself

It was well known that the ryot made his arrangements for cultivating in the month of Cheit, and he (Baboo Peary Chand Mittra) would, therefore, support the amendment.

THE ADVOCATE-GENERAL said that there could be little question as to the desirableness of an alteration of the law, if the law was that the zemindar could give notice of enhancement of rent for the ensuing year on the last day of the current year. But it appeared to him that the matter went somewhat beyond a mere question of procedure. The case really involved the character of the tenure on which a ryot held. If he held under a tenure under which his rent could be enhanced on a day's notice, it was not a matter of procedure to give the ryot a right to hold unless he had three months' notice. If, therefore, the Council had come to the determination of adopting the principle that the present should not be taken as an opportunity for introducing amendments of the substantive law, he (the Advocate-General) thought the amendment did not come within the scope of the present deliberations of the Council.

The Council then divided :—

Ayes 7.	Noes 5.
Baboo Issur Chunder Ghosal.	Baboo Chunder Mohun Chatterjee.
Koomar Satyanund Ghosal.	Mr. Thompson.
Mr. Sutherland.	Mr. Dampier.
Mr. Alcock.	The Hon'ble Ashley Eden.
Baboo Peary Chand Mittra.	The Advocate-General.
Mr. Money.	
The President.	

The motion was therefore carried, and the Section as amended passed.

Section 15 provided for the mode of contesting notice of enhancement of rent.

BABOO ISSUR CHUNDER GHOSAL said, under this section there had always been a failure of Justice because, as he had ready stated, there was no procedure provided for it, and the notice under Sec. 13 of the old law did not apply, He would refer the Council to the case of Chunder Coomar Dutt cited in the Weekly Reporter Vol. X. Page 445.

After some conversation the consideration of the Section was postponed.

Sections 16 and 17 were agreed to.

Section 18 laid down the grounds on which a ryot, having a right of occupancy, was liable to enhanced rent.

BABOO PEARY CHAND MITTRA said, he thought the second clause of the Section required consideration. There were cases in which there might be an improvement of the land not by the agency of the zemindar or ryot, but from other causes. Was the zemindar in that case entitled to higher rent? For instance, a line of railway might be constructed, a tank dug, or a canal excavated in the neighbourhood, which would, no doubt, enhance the value of the land. This Section did not sufficiently cover all those cases, and he submitted that it would be better to postpone the consideration of the second clause.

After some conversation, the Section was agreed to.

Section 19 was also agreed to.

Section 20 provided for the relinquishment of land by a ryot after notice given.

On the motion of MR. MONEY, an amendment similar to that in Section 14, was carried.

MR. MONEY then said, he quite agreed that it was not the province of this Council at present to interpret any Sections of Act X of 1859 by decisions of the High Court. But when we found so gross a blunder in the law that words specified distinctly what they were not intended to specify, then he thought the Council were bound to interfere. The Section said at the beginning that "any ryot who desires to relinquish the land held or cultivated by him, shall be at liberty to do so." But it was quite clear that "any ryot" was not at liberty to do so, and really the High Court showed that that was not the meaning of the Act. He (Mr. Money) had seen the exceeding inconvenience caused both to ryots and zemindars by this declaration of the law. When he was Commissioner of Bhaugul-

pore, he had cause to explain to a large number of ryots, who had accepted pottahs and signed agreements for higher rents, and had intended to throw up their jotes under this Section, that they were not at liberty to do so. But they fell back on the words of the law, which said that "any ryot" was at liberty to relinquish his land, and there was no provision whatever showing that those words did not apply to ryots holding under agreement. There was a ruling of the High Court which said that this section did not apply to cases where the ryot had entered into a lease for a specific term. Kashi Singh *v.* P. Onraet, 9th May 1866.

And there was a subsequent ruling to the same effect, and clearly that was the intention of the law. In the Oudh Rent Law, in the section similar to this one, the provision which he intended to suggest for adoption was adopted. The words in the Oudh Rent Law were:—

"Provided that nothing in the former part of this Section shall affect the terms of any written agreement between the parties."

It might be said that as the High Court had ruled that "any ryot" did not mean any ryot, it was quite unnecessary to amend the law; but it must be remembered that it took very long for a ruling of the High Court to reach the ears of the parties most interested. In this Section we were not saying what we meant, but we were saying decidedly what we did not mean. He was aware that he laid himself open to the charge that his amendment would make a change in the substantive law; but he thought that that was not a correct statement of the case: he was simply explaining the meaning of the law.

THE ADVOCATE-GENERAL said, it did not appear to him that the amendment before the Council was at all open to the objection that it produced any substantive change in the existing law. The construction that the High Court put upon the law as it stood in Section 19 of Act X of 1859, was decisive as to its meaning. The only doubt in his mind was whether this Council ought to declare the law, unless there was a doubt as to what the law was. He had never heard of a case where the Legislature declared the law, merely because some portion of those affected by the law did not know what it meant: the present case was one in which one construction, and only one construction, had been put on the language of the Legislature.

MR. MONEY said, if the law was already so clear that only one construction could be put upon it, there would be no necessity for an amendment. But he would beg to say that whatever the law might now be understood to be, not very long ago it was not clearly understood. On the occasion to which he had referred, he came down to Calcutta having certain doubts in his own mind, and he took the opportunity of consulting four or five persons whom he thought best qualified to understand and explain the law. He found that the opinions of all these persons were contradictory as to the meaning of the law. In 1864 the present Chief Justice understood the law exactly as the ryots in Bhaugulpore did. In a minute on Act X of 1859 the Chief Justice then said:—

"There is another point: Landowners should be encouraged to grant leases for terms of years, and Section 19 should be restricted to tenants holding from year to year, or at will. Tenants who have agreed to hold for terms which have not expired, should be excepted from the operation of the clause. It is useless for a landowner to grant a lease for a term of years if the tenant may throw it up whenever he thinks fit. The advantage is all on one side."

Clearly then the Chief Justice had once understood the words to entitle any ryot to throw up his lease at any time he thought fit. We had here proof that the words might be misunderstood even by the highest authority.

MR. RIVERS THOMPSON said, he opposed the amendment on the principle that it would be admitting the thin end of the wedge, which would oblige us to take into consideration similar amendments affecting the principle of this Bill. He thought the Council would act more wisely in leaving the Section to stand as it was.

MR. SUTHERLAND said, he trusted the Hon'ble Member would press his motion, which was clearly a necessary verbal amendment.

MR. DAMPIER said, he had intended in this instance to vote for a relaxation of the principle which had been adopted of not altering the language of the old law. Under the explanation first given by the Hon'ble mover of the amendment, it had appeared to him that the present proposal was one simply for expressing in intelligent English what no one could for a moment doubt to be the real intention of the section. When, however, the Hon'ble Mover told the Council that the Chief Justice himself had first understood the intention of the section differently, he (Mr. Dampier) must fall back upon the principle of adhering to the wording of Act X. of 1859. He would vote against the amendment.

The Council then divided :—

AYES 6.	NOES 6.
Baboo Issur Chunder Ghosal.	Baboo Chunder Mohun Chatterjee.
Koomar Satyanund Ghosal.	Mr. Thompson.
Mr. Sutherland.	Mr. Dampier.
Mr. Alcock.	The Hon'ble Ashley Eden.
Baboo Peary Chand Mittra.	The Advocate-General.
Mr. Money.	The President.

The numbers being equal, the President gave a casting vote with the noes.

The motion was therefore negatived, and the section as amended was then agreed to.

Sections 21 to 25 were agreed to.

Section 26 related to the ejectment of cultivators, farmers, &c., by zemindars.

MR. RIVERS THOMPSON said, some explanation was necessary in regard to this Section. The Section as it stood was of no practical use. There was, it was true, a provision in Act X of 1859 which said that if the landlord required the assistance of the Collector in ejecting his tenant, he might obtain it. The Section said that the Collector should proceed to enquire into the case, and pass orders in the manner provided for suits under this Act. That was more in the nature of an application to the executive authorities for assistance to prevent a breach of the peace. There was some difference of opinion when the section was discussed in Select Committee. The opinion prevailed that it would be better to leave out that part of the Section which referred to the *Z*emindar requiring the assistance of the Collector, merely retaining the declaration that the *Z*emindar had the right to eject. He knew that there would be some opposition in this matter, and he should be glad to hear the reasons that might be urged before making any remarks himself. A very recent decision of the High Court laid down that the application for assistance was necessary before the landlord could legally eject, and in this conflict of opinion he should be glad to hear the reasons that Hon'ble Members had to urge on the subject.

MR. SUTHERLAND said, as Hon'ble Members would see, to the Committee's Report he had appended a note with reference to those Sections which had been embodied in the Bill as first amended by the Select Committee, and which Bill, as he had no practical experience on the subject, he had sent to some gentlemen in the Mofussil, who generally approved of its provisions. He believed he was not present at the meeting of the Select Committee at which it was decided to withdraw those powers, and it was only when he saw this declaratory Section in the Bill as now printed, that the matter was brought before him at all. What he objected to was that the Section declaring the right of Zemindars to eject their tenants, should leave out the process for the enforcement of such right. He was unable to see (and persons whom he had consulted were under the same difficulty) what process should be adopted. No doubt it would be answered that the Procedure Code would furnish the means for ejecting ryots who held their tenures beyond the period of their leases; but the other summary process had worked for some years, and he submitted that the like procedure should be maintained. He would venture to suggest that the con-

sideration of this declaratory Section should stand over.

BABOO ISSUR CHUNDER GHOSAL said, if the process by which the right to eject tenants who had no rights of occupancy, or farmers whose leases had expired could be enforced, was taken away, there would be no law left by which Zemindars could enforce that right. The Chief Justice, in a decision of the Full Bench, held that a tenant in possession after the expiration of his lease could not be ejected but by due course of law, and if illegally dispossessed was entitled to sue and recover possession. On reading the whole of that decision, he (Baboo Issur Chunder Ghosal) found that if this right of ejectment were taken away from the landlord, and no other power given instead, all that he could do would be to turn out the ryot himself; and if such a course were adopted, Section 15 of Act XIV of 1859 would interfere with his proceedings; and the right would then be no right at all. Because a right which could not be enjoyed legally, was of no use; and he (Baboo Issur Chunder Ghosal) therefore thought either that new Sections should be introduced, providing for a means to enforce the right of ejectment, or that the omitted Sections of Act X of 1859 should be restored.

MR. MONEY said, this question raised another question. The ruling of the High Court applied to the Section omitted. It was quite clear that section 26 of the present Bill was passed on the supposition that the Zemindar had three courses open to him. The first course was that of ejecting the ryot *proprio motu*; the second under Section 25 of Act X of 1859; and the third of turning the ryot out by a suit for ejectment. But as the High Court had ruled that the Zemindar could not turn his ryot out himself, there were only two alternatives left, one under Section 25 of Act X of 1859, and the other under a suit of ejectment. If therefore we omitted Section 25 of Act X of 1859, we reduced the Zemindar to one alternative only. The decision last referred to said—

"It is said that a Zemindar is not bound to apply to the Collector for assistance under that Section, and that it is only optional with him to do so when he requires assistance, and that if he can turn the tenant out by force, he is at perfect liberty to do so."

That was apparently supposed to be the law by those who proposed to omit Section 25 of Act X. But the High Court said that the Zemindar was not at liberty to take the law in his own hands; the Zemindar was therefore deprived of the supposed original right to turn out the ryot by force. Now, you deprive him of the right of turning the ryot out by the assistance of the Collector, and he was only left to the third alternative of a suit. He (Mr. Money) thought therefore that Section 25 of Act X of 1859 should be restored.

THE HON'BLE ASHLEY EDEN said, there appeared to be some misunderstanding as to what the actual provisions of Section 25 of Act X of 1859 were. It seemed to be supposed that it gave Zemindars some power to eject their ryots, which they did not otherwise possess. He thought, however, that it did nothing of the sort. The power of ejectment being already possessed by the Zemindar, the section in question did no more than say how the Zemindar was to proceed if he was unable to enforce that power without the assistance of the Collector. There was nothing whatever in the section which could be taken to invest the Zemindar with any special and definite powers. The Section said:—

"If any Zemindar or other person in receipt of the rent of land require assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy," &c.—

But it did not say he should not eject them without such assistance if he could do so. Indeed it was quite clear from Section 21 of Act X of 1859, which had been re-introduced into this Bill, that a Zemindar had a right to eject certain classes of ryots without the interference of the Court, though this power was specially restricted by the same section in regard to other classes

of ryots. He (Mr. Eden) was quite clear that whatever the state of the law in regard to the Zemindar's power to eject, and from whatever source that power was derived, whether it was an inherent power recognised from time to time by legislation, or whether it was a power directly conferred by any special law, there was nothing in Section 25 of Act X of 1859 which conferred any power not otherwise possessed, and its omission would leave the Zemindar not one bit worse off than he was before.

MR. MONEY said the remarks of the Hon'ble Member who spoke last were simply an expression of his opinion of Section 25. The grounds on which he (Mr. Money) went were contained in the decision of the High Court, by which we must go. It was there laid down that the Zemindar was not at liberty to take the law into his own hands.

Therefore, he (Mr. Money) said that it appeared clear that under that decision the Zemindar was left without any power whatever to eject his tenant, except with the Collector's assistance. He thought the consideration of the Section should stand over.

THE ADVOCATE-GENERAL said that he was not aware what (if any) was the substantive amendment before the Council. It had been suggested by the Hon'ble member on his right (Mr. Sutherland) that Sec. 25 of Act X of 1859 should be restored. But he (the Advocate-General) thought the right course would be to omit Section 26 of the Bill, the effect of which would be to leave the Zemindar, with respect to ryots not having right of occupancy and to tenants holding over, in the same position as if Section 25 of Act X. of 1859 had not been passed. He did not understand what distinction or difference of procedure there ought to be made between ryots having rights of occupancy and ryots not having such rights. Why should it be declared by the Legislature that as regards certain tenants he might take the law into his own hands and not as to others? Therefore, without at all opposing the suggestion that the consideration of the Section should stand over, he should be prepared to move the omission of the present Section altogether.

MR. RIVERS THOMPSON said, that was the view of the Select Committee. It was only in deference to the opinions of certain members of the Committee that something should remain to show the right of the Zemindar to eject, that the Section in the Bill was retained. If Section 25 of Act X of 1859 did not stand as part of the law, the opinion of the Chief Justice upon which Hon'ble members claiming the retention of the Section relied, would not avail them in their arguments. Section 25 was probably enacted to prevent breaches of the peace. By leaving it out altogether, Zemindars would have to proceed by regular suit. If that was the object of the amendment of the Hon'ble Member, it might perhaps be adopted; otherwise the simplest course would be to omit Section 26 altogether.

The further consideration of the Section and of the Bill was then postponed.

THE PRESIDENT suggested that if any Hon'ble Member had to propose an amendment, it would much expedite business if he would give notice of his amendment to the Secretary, who would then be in a position to see the amendments carefully prepared and circulated before the next meeting.

The Council was adjourned to Saturday, the 8th Instant.

Saturday, the 8th May 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq. Advocate-General.
The Hon'ble Ashley Eden.
H. L. Dampier, Esq.
A. Money, Esq., C. B.,
A. R. Thompson Esq.,
Baboo Peary Chand Mittra.
H. H. Sutherland Esq.
Koomar Satyanund Ghosaul,
Baboo Issur Chunder Ghosaul,
and
Baboo Chunder Mohun Chatterjee.

MOFUSSIL POLICE.

THE HON'BLE ASHLEY EDEN postponed the motion, which stood in the list of business, that the Bill "to amend the constitution of the Police Force in Bengal," be passed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlord and tenants be further considered, in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

The postponed Section 26 having been read—

MR. SUTHERLAND said, in pursuance of the notice in the hands of Hon'ble Members he would move the omission of this Section. He was aware that this motion would not meet with opposition, as the learned Advocate-General had already given notice of a similar motion, and the Hon'ble Member in charge of the Bill approved of the withdrawal of the Section. He would, therefore, simply move that the Section be omitted.

MR. RIVERS THOMPSON said, he had no objection to offer to the motion before the Council; but he would reserve to himself the right to oppose the amendments which depended on the omission of this Section, if the Hon'ble Member proceeded to bring them forward.

The motion was agreed to.

MR. SUTHERLAND said, he now came to the other amendments of which he had given notice, and regarding which he anticipated there would be some discussion. Though they were called new Sections, they were copied *verbatim* from the Bill as first proposed to be amended by the Select Committee, and which was published for general information, and specially sent to the British Indian Association, the Landholders' Association, and other public bodies. He was at a loss to know why those Sections had been omitted from the Bill as finally settled by the Committee; and though he had since heard some reasons assigned for their omission, he regretted that he could not admit that they were adequate reasons. He was asked at the last meeting of the Council to furnish his grounds for objecting to the withdrawal of the summary procedure. He thought rather that the burthen lay with those who advocated its withdrawal to furnish grounds for the abolition of a procedure which had been in existence for ten years, and against which no complaints had been made, that it had worked unfairly, or that it had been made the engine of oppression in the hands of Zemindars. Except some general remarks about its inutility, its clumsiness of wording, and the difficulty of adapting these Sections to the change of jurisdiction provided by the Bill—a difficulty, he had no doubt, which the learned Assistant Secretary would be able satisfactorily to overcome—he did not remember hearing anything more urged against the Sections. He was present at the meeting of the Select Committee at which it was determined to omit these Sections, but he confessed he did not follow the discussion, and did not see till afterwards the effect of their omission; he ventured to speak with great diffidence on a subject of which he had no personal experience, especially as he had the misfortune to take a different view from Hon'ble Members who were better qualified to judge. He would, however, confidently ask the Council to retain these Sections. He thought their withdrawal had taken the public by surprise. The Bill as first amended and circulated to many through the country, had met with the approval generally of District Officers as well as Zemindars and planters, but he believed that now the with-

drawal of the ejectment procedure would be regarded with disfavor.

The Hon'ble Member in charge of the Bill, in his opening speech last Saturday, denied the necessity of a summary procedure in land suits, when referring to a paper on the subject in the hands of the Council. He (Mr. Sutherland) thought it was hard to deny the Zemindar a summary process of ejecting ryots in certain circumstances, when he himself was subject to one of the most summary processes in the world. Hon'ble Members knew that a defaulting Zemindar in respect to the land revenue was dealt with very summarily, *viz.*, by sale of the estate from which land revenue was due. It was true that such sales occurred very seldom, but he (Mr. Sutherland) thought that the knowledge that the estates of Zemindars were subject to sale by such stringent rules, prevented the frequent occurrence of Government sales for arrears of revenue. And he thought the case was the same in this matter: the summary ejectment process had been very little used. The ryot knew very well that this process hung over him; he was well aware that he could be summarily turned out. No doubt false defences had been made. Zemindars too, doubtless, had unjustly ejected ryots as surely as ryots had made false defences. But if you took away this summary process, people who were entitled to speak on the subject with authority, had said that there would invariably be false defences made to ejectment suits, leading to increased litigation and trouble. A gentleman of experience with whom he (Mr. Sutherland) had conferred on the subject now before the Council, said that it was one of the most dangerous things in the world to alter an existing enactment that had worked satisfactorily. Vakeels and others in the Mofussil would, to meet their own purposes, put up the ryots to resistance, and any proceedings involving delay would become engines of extortion in the hands of designing men, who would gain by the increase of litigation.

He (Mr. Sutherland) admitted that the proceedings under these Sections might be abused, but he thought that it rested with those who advocated the withdrawal of these Sections to show instances of abuse. He thought further that there was something declaratory in the Sections, the wording of the first of which was—If any Zemindar * * * *requires* assistance to eject any cultivator &c." That was a declaration that the Zemindar had a right to such assistance. Therefore the omission of that Section from the Bill took away something declaratory in Act X of 1859. But he (Mr. Sutherland) was not prepared to press that. As he was told by Hon'ble Members that the excision of these procedure Sections would still leave to Zemindars their right to eject tenants by force, he thought such a state of things would be very apt to lead to an undue exercise of power, to breaches of the peace, and endless evils. He was not speaking in the interest of the Zemindar against the ryot. If he had a bias it was on the side of the ryot: the long purse won in the end, and the poor man who had been so ill advised as to try a false defence would infallibly have to bear the brunt in the long run. He admitted that the Civil Procedure Code afforded a remedy in the end: but he did not believe that the procedure had been found to work expeditiously enough for such cases. He was sure that he had not been able to do justice to the subject. He had been guided mainly by the opinion of other people as to the working of the law; but the principle of expediency and justice involved in this summary procedure commended itself to his own mind.

With these remarks he would move—

"1. The introduction of the following new Sections:—

Ejectment of cultivators, farmers, &c., by Zemindar.

A. If any Zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, he shall make application to the

Court having jurisdiction to entertain a suit brought for the recovery of such land, and the Court shall proceed thereupon to enquire into the case in a summary way, and pass orders in the manner provided in Sections B, C, D, E, F, G, and H: Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind denominated ticca zur-i-peshgi, or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by regular suit.

Form of application under Section A or 27.

B. Every application under Section A or Section 27 shall be made by petition to the Court which shall have jurisdiction to entertain a suit for the recovery of rent land which the applicant may seek to attach or from which he may seek to eject any person, or the transfer or division of, or succession to which he may seek to have registered, and shall in such petition state the relief which he seeks, and the nature of the case which entitles him to such relief. Every such petition may be in the form in Schedule (A), which shall be applicable to the case and shall be verified as if the same were a plaint.

Procedure upon such application.

C. Upon receipt of any such petition, the Court, if upon examination of the person presenting such petition the applicant appears to be entitled to the relief he seeks, may issue a summons directed to the person in possession of the land which the applicant seeks to attach, or to the cultivator, farmer, other tenant, or agent to eject whom the applicant requires assistance, or to the person refusing to admit to registry, or otherwise give effect to any transfer of succession or division as the case may be.

Form of summons.

D. Every such summons shall be in the form in Schedule (B), and shall be served as if the same were a summons in a regular suit.

Procedure if order of Court be disobeyed.

E. If the person summoned shall not appear at the time and place appointed and show good cause to the contrary, and shall still neglect or refuse to comply with the prayer of the petitioner, the applicant may make to the Court proof of the matters alleged in his petition, and thereupon the Court may pass such orders as to it may seem necessary for effecting the prayer of the petition.

Provisions of Act VIII of 1859, regarding witnesses, &c., to apply.

F. All the provisions of Act VIII of 1859, provided for compelling the attendance of witnesses and their examination, and respecting the production of documents, shall apply to proceedings under Sections A, 27, B, C, D, and E.

Orders under Sections 3 to 37 not appealable.

G. No order made in any summary proceeding under Sections A, 27, B, C, D, E and F, shall be appealable, but any party to any such summary proceeding may bring a regular suit to set aside the same within one year from the date of such order.

Costs on such proceedings.

H. The costs of every such summary proceeding and of all proceedings therein shall be in the discretion of the Court, and every order made in such summary proceeding may be enforced as if the same were a decree of such Court.

2. In Section 27, line 14, to insert the following words after the words 'divisions':—

If any Zemindar or superior tenant refuse to admit to registry, or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Court having jurisdiction to entertain a suit for the recovery of waste land, and the Court shall thereupon proceed to enquire into the case in a summary way in the manner provided in Sections B, C, D, E, and F, and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry, and otherwise give effect to such transfer to succession."

MR. RIVERS THOMPSON said, he was sure that the Council would agree that the Hon'ble Member had no reason to express any diffidence in approaching the subject which had led to this discussion, because the clearness with which he had explained the grounds of his amendment, and the temperate manner in which he had expressed his views upon the subject, commended themselves to the consideration of the Council. Perhaps, too, the Hon'ble Member was right in claiming that it would be necessary for him (Mr. Thompson) who had most strongly advocated the omission of the Section in the Bill, to show cause why it should not be retained. He was quite prepared to meet that challenge, and he would take as one ground, that the summary procedure, upon which the retention of the Section was advocated, would only increase litigation, and, in reality, lead to no practical benefit. The particular amendment proposed was connected with several others to which it would be necessary to refer in the remarks which he was about to make.

He referred to the amendments marked A to H, which contained what was described as a summary procedure for the class of cases referred to in Section 25 of Act X of 1859. As the Hon'ble Member had said, they were a re-introduction of the Sections originally contemplated by the Select Committee, but which, upon maturer consideration, the Committee had decided to exclude altogether. He (Mr. Thompson) would ask the attention of the Council to the objects of Section 25 of Act X of 1859. He would point out that the circumstances under which the assistance of the Collector could be obtained to eject a tenant were very restricted; that the Section in the first place did not apply to a ryot with a right of occupancy; nor could the landlord use it for the eviction of a tenant in any case in which the ryot was in arrears of rent. For such cases other Sections in the law provided. Here the assistance of the Collector might be claimed simply in the event of a tenant-at-will refusing to surrender his lands on the determination of his lease, and the object of the Section in Act X of 1859 had probably been that as such evictions might possibly lead to the disturbance of the peace, the intervention of executive authority was advisable. In such cases then the Zemindar might proceed to the Collector, and apply for assistance to eject; and as regards the procedure, the law said that the Zemindar was to make an application to the Collector, and that the Collector "should proceed thereupon to enquire into the case and pass orders in the manner provided for suits under the Act."

It was supposed that the use of these words, which certainly were somewhat vague, provided even under Act X a process which was more summary than that provided for other suits under that law. The application was to be regarded as a petition for assistance, and not as a plaint in a regular suit. But with this difference in name the summary character of the proceedings ended, and as regards every thing else in the enquiry, he (Mr. Thompson) believed that the procedure was in all cases regulated as if it was an ordinary suit. The Collector would call on the ryot to show cause why he should not be ejected. The ordinary defence would probably be that the lease had not expired, or the ryot was one enjoying a right of occupancy; and in any case in which a question of right arose in the matter, the Collector would not interfere further, but would refer the parties to a regular suit. Similarly, if the application was disposed of summarily, it had been ruled that the appeal lay to the Commissioner of the Division; and whenever a case of this kind came up before the Commissioner, he had the authority of the Hon'ble Member opposite, who had had a large experience as a Commissioner, in saying that if the appeal involved any question of right he declined to have any thing to do in the matter. Of course, applications of this sort might in some instances be disposed of summarily, but he believed that in a great majority of cases one or other party would be dissatisfied with its summary disposal, and would take the case into the Civil Court. It was partly in consequence of the difficulty of dealing with this summary procedure, and of introducing any summary procedure, when such suits were transferred to the Civil Courts, that would be satisfactory, that it was finally resolved by the Select Committee to omit this Section. It would be obvious that, to allow parties to go to the Civil Courts for a summary procedure, and then permit them to go to the same Court again for a regular procedure in the same cause of action, would be an anomaly. It had been suggested that the object of this Section was to secure greater dispatch in the disposal of these cases. Now, if the class of case was one of great importance, or if their number was so great as to require a special remedy, a justification might have been made out for a special procedure. Such, however, was not the case. He (Mr. Thompson) would refer to a return of the Board of Revenue, from which, taking a rough calculation of the number of applications under Section 25 of Act X of 1859 made within the last nine or ten years, he

found that the number amounted to about 1,000 applications annually in the forty districts of Bengal. The Hon'ble Member might say, that the very existence of this Section had prevented the necessity of more applications, and giving him the benefit of his supposition, it was clear that the special procedure suggested in the amendments was of no advantage at all where such cases did arise. For, on examination, it would be seen that the draft Sections submitted for the acceptance of the Council were practically nothing more or less than the procedure in force in civil suits. The application was to be made to the Court under Section B to eject, and the petition must be in a particular form. Except in name, there was nothing different here from an ordinary plaint. Then under Section C, in receiving such petition, the Court was to issue a summons to the party to appear and show cause, and this would be the course under the Code of Civil Procedure. Then the next Sections went on to provide a form of summons, and on the failure of the party summoned to show good cause, the Court might pass such orders as it might seem necessary; and in all these matters, it was somewhat inconsistently provided, that the observance of all the provisions of Act VIII of 1859, for compelling the attendance of witnesses and the like, were to be followed. So that, practically, nothing more or less was secured than the name of a summary procedure for, what was no worse or better than the regular procedure in a civil action. He (Mr. Thompson) certainly did not think that any thing was gained by such propositions in the way of despatch, while much was lost in the way of a definite settlement of the dispute; for the draft Sections proceeded to lay down that, after it was all over, though the summary decision was not appealable, it was competent to either party to bring within a year a regular suit to set aside the summary decision. And he maintained from the experience had of the known litigiousness of people in this part of the country, that in most cases this summary proceeding would not be held conclusive, but that regular suits would follow, and that litigation, which it was the interest of the Government to diminish, would be largely increased. He thought if no practical good was to be secured by the interpolation in the Bill of a summary procedure for a particular class of suits, very limited in number, it would be better on every ground to reject the amendment.

THE ADVOCATE-GENERAL said, that at the risk of going to some extent over the same ground taken by the Hon'ble Member who last spoke, he wished to state the reasons why he concurred with the Hon'ble Member in thinking that the procedure proposed in these Sections should not be adopted. Section A was in effect a re-enactment of Section 25 of Act X of 1859. The Council had, by an unanimous resolution, agreed to the omission of what at present stood as Section 26 of the Bill before the Council, the effect of which was merely to negative the supposed or possible effect which the omission of Section 25 of Act X of 1859, from the present Bill, might produce in the assertion of the right of the Zemindar to eject ryots; and the question was, whether we were to retain in substance what was Section 25 of Act X of 1859, which recognised the right of the Zemindar and the person in receipt of the rent of land to have the assistance of the Courts in ejecting defaulting or overholding tenants. From what was stated at the last meeting by Hon'ble Members having great practical acquaintance with this subject, it appeared to him (the Advocate-General) that the objection to the omission of Section 25 of Act X of 1859 was principally based on this, that the Section in question was a legislative recognition of the power of the Zemindar or the person in receipt of the rent of land to eject without any recourse to the Courts of Justice. He took the state of the law prior to the passing of Act X of 1859 to be this, that putting out of the question such powers as were given by Regulation VII of 1799 for the realisation of arrears of rent by distraint

and sale of crops, and by sale of tenures in certain cases, that Regulation recognised the power of the Zemindar and of the landlord generally in certain cases to eject their tenants without recourse to the Courts of Justice. In the 15th Section of that Regulation, and the 7th clause, it was expressly stated that in the case of ryots not having a fixed right of occupancy, but having the right of occupancy subject to the payment of certain rates of rent, the landlord's power of acting without recourse to the Courts of Justice was recognised, subject to the risk of the landlord being subjected to an action, or being otherwise brought to account for a misuse of his powers. Then what Act X of 1859 did was this. It repealed Section 15 of Regulation VII of 1799. It did not in any way define or attempt to define what were the instances in which the right of ejectment, without recourse to a Court of law, existed, but simply provided that where the party claiming that power of ejectment was unable to put it into execution, he might have recourse to legal action, and require the assistance of the Collector. And therefore he (the Advocate-General) took it to be perfectly clear that Section 25 of Act X of 1859 left the right of the Zemindar to eject if he could, without having recourse to Courts of Justice at all, exactly what it would have remained if Regulation VII of 1799 had never been passed. All that the Legislature in 1859 did was to enable Zemindars or persons in like position to obtain, if they were entitled to eject without suit, the assistance of the Collector for the purpose of carrying out ejectment in a certain mode. Then that being so, it was said, in the petition which had been printed and laid before the Council from a highly respectable body, that the specific provisions which apparently the Bill at one time contained for the purpose of carrying out the assistance which, under Section 25, had to be given by the Collector, were provisions which defined the process which was to be adopted by a Zemindar who had the right to eject without suit, and that the Bill in its present shape did not indicate any such process. The Bill only repeated the provisions of Act X of 1859, that a ryot in arrear of rent should be liable to ejectment: it repeated that if the ryot was a ryot with a right of occupancy or a lease-holder, he could only be ejected in execution of a decree. But it seemed to have been lost sight of that when the Bill said that a ryot (subject to certain exceptions) should be liable to be ejected if he got into arrears, it went on to provide that all suits brought under the Act, including suits for ejectment, were to be brought under the Procedure Code, and in this way did lay down the remedies which the Zemindar was to take for the purpose of ejecting a ryot; and therefore it was a misconception to suppose that in omitting what was called the Section which provided a summary procedure in suits of ejectment, we were providing nothing in its place. And then it simply reduced itself to this, that there had been no greater convenience and no greater despatch, under the procedure which had been suggested in the omitted Sections, and which was now brought forward again by the Hon'ble Member. In fact, the proposed procedure, which was called summary, was nothing more or less, as regards what was to be done, than under a different name a suit. He (the Advocate-General) did not at all complain of the view which appeared to have been taken by Hon'ble Members, but when these Sections were first introduced, it seemed to have been supposed, by those who supported the amendment, that Section 25 of Act X of 1859 was worded so vaguely and loosely that it, at any rate, was open to misconception; because all that the Section said was, that in those cases in which the assistance of the Collector was asked for the purpose of ejectment, the Collector, on the application being made to him, was to proceed to enquire into the case, and pass orders in the manner provided for suits under the Act. And certainly that Section might have been considered in practice by the revenue authorities as enabling them to deal with cases of the

kind in a different mode from that in which they would have dealt with the case had it been a regular suit to eject, as regards giving the party against whom the proceedings were taken an opportunity to shew cause why he should not be ejected. But what was the character of the procedure which was proposed to get rid of this vagueness and uncertainty? The application was to be made by petition to the Court which would have had jurisdiction to entertain a suit brought for the recovery of the rent of land, and was to state the relief sought and the nature of the case which entitled him to such relief: that in other words was the plaint. He apprehended that the petition which Section B contemplated, would necessarily contain precisely the same statements and seek precisely the same relief, as would be stated and sought by a person seeking to eject by regular suit. Then there was the preliminary examination of the person presenting the petition, and if on that examination he appeared entitled to the relief he sought, the Court might issue a summons directed to the person in possession. The summons was to be served as for a summons in a regular suit: if the defendant did not appear, the plaintiff was to make to the Court proof of the matters alleged in the petition. Now, he (the Advocate-General) said that there was no difference between the procedure here proposed and the procedure by regular suit in any respect except this. If you substituted for the petition the verified ordinary plaint in a regular suit, without any preliminary examination as to whether the plaintiff was entitled to the relief he sought, he was entitled to his summons, and under that the parties were required to appear on a certain day. If the defendant did not appear, the case might be decided at once. Therefore, either the proposed procedure was indentical with that which the Bill in its present shape gave, or it introduced what seemed to him (the Advocate-General) to be the unnecessary retention of the preliminary examination of the plaintiff in support of his title to relief, before even the issue of the summons. One point which might be raised in favour of what in this amendment was called summary procedure was, that in a regular suit, in point of practice, although the return of the summons might be fixed at a short date, the actual hearing of the suit would depend on the state of the file of the particular Court before which the plaint was filed. But he took it, so might it be with regard to applications to be made by petition, and in which summonses were to issue. If the object and meaning of the expression "the Court shall proceed to inquire into the case in a summary way" meant that on the day fixed for the hearing the matter was to be taken up at once without reference to the state of the file of the Court, it was a question for consideration whether such a mode of proceeding might not be productive of great inconvenience to other suitors. But if that was the object, then, he apprehended, the more direct way would be to provide that suits for ejectment of ryots who were in arrears of rent, or of tenants who held over, should, whenever possible, (because you must in any case put some limit) be taken up by the Civil Court on the day fixed by the summons for the appearance of the defendant. If there was any such object in the use of word "summary," that would be the simpler and more direct way to attain the object in view. When the Legislature in Section 25 of Act X spoke of the Collector proceeding to enquire into the case and pass orders, and in this proposed section it was said that the Collector was to enquire into the matter in a "summary" way, we meant that it was to be enquired into without going through the process of a regular suit. But he (the Advocate-General) thought it was plain that process by regular suit might be as quick as any such summary proceeding. A regular suit was not necessarily a long suit, any more than what was called a summary proceeding was necessarily short: delay in each arose from the question of how the case was opposed, and what defence was made. All that would be required would be to direct that as regard suits of the kind in question, the case should, as far as prac-

The Advocate-General.

ticable, be taken up on the day fixed for the appearance of the defendant. If that were done, the whole process of the law would be rendered simple and uniform, and would, as regards procedure, be brought under the provisions of Act VIII of 1859. He did not now suggest that course, because he did not know how far such a mode of dealing with these suits would lead to delay in the disposal of other regular suits beyond the time in which they would have been ordinarily disposed of. The difference would be that when the decision was made in a regular suit, the party who did not appear could not appeal, and could not bring another regular suit to set it aside, because the simple answer would be that he ought to have appeared and made his defence. The result of the summary procedure was, however, that either party might bring a regular suit to set aside the summary decision: a party might make default in appearing, might set up no defence, and might then bring a regular suit, thus placing the Zemindar in exactly the same position in which he was before the institution of any proceedings. But by the course under the procedure of the Bill in regular suits, from a decision *ex parte* once made, there would be no appeal, and the only remedy would be for the defaulting party to come in and ask for the decree to be set aside on the ground that he had not been properly served with the summons, or had been kept ignorant of the circumstance of the suit having been brought. Therefore as to the final result, there could be no comparison between the so-called summary procedure and the procedure which this Bill provided in this limited class of suits. For these reasons, he (the Advocate-General) would oppose the motion before the Council.

BABOO ISSUR CHUNDER GHOSAL said that when the British Government assumed the *Dewany* of this country, they, for a long time, followed the Mahomedan plan of collecting the revenue. The Zemindars and Talookdars were put into prison for any arrears that might have been due from them, and then to collect these arrears Tehsildars and Farmers were appointed. These in their turn again were also put into prison *together with their sureties*, if they failed to pay the stipulated revenue at the stipulated time. That was the law in those times: legal and personal rights were never recognised, and personal liberty was always in jeopardy, and the British Government ultimately improved on the Mahomedan procedure by taking some *mehals* under *khas* management, and incarcerating poor ryots for arrears in certain cases. It was not till 1799, that is six years after the conclusion of the Permanent Settlement, that the course of things began to change. Pottahs began to be annulled, and jotes began to be attached, but no procedure for ejectment being given, the Zemindars and others in those times used to eject their ryots *vi et armis*. The consequence was that frequent and violent breaches of the peace took place, which led to a great deal of scandal. The Government was, therefore, constrained in subsequent years to enact laws to prevent these breaches of the peace, and this state of things continued till the Revenue Code was passed. No doubt great names were associated with the passing of Act X of 1859; men of vast experience and the highest ability were, no doubt, consulted, but the way in which that Act was drafted was, he believed, open to question. He mentioned at the last meeting of the Council that the language of the Act was not very clear, and he was glad to find he was confirmed in that belief by the remarks that fell this day from the learned Advocate-General. Now the effect of the omission of Section 25, as it was in Act X of 1859, or as it stood in Section 26 of the present Bill, would be that the landlords would not be in a position to enforce the ejectment of their ryots who occupied lands without any right of occupancy, or of their farmers who held on their farms after the term of their leases had expired, for the procedure under which the landlords could so eject would be entirely taken away from them; and if no new provision was made for the enforcement of the right of ejectment, he (Baboo Issur

Chunder Ghosal) was afraid that the ryots and others would illegally retain possession of land, and hence would occur breaches of the peace. He did not see why any alteration of the law as it existed should be proposed in Council, when it was not the intention of the Government to interfere with the substantive law as it stood. It was stated in the statement of objects and reasons appended to the Bill that no change would be made in the substantive law; he (Baboo Issur Chunder Ghosal) took that to be the pledge of the Government in the matter, and he believed that the taking away the right of ejectment would be interfering with the substantive law of Act X of 1859.

[THE ADVOCATE-GENERAL.—How would the omission of the Section alter the substantive law?]

BABOO ISSUR CHUNDER GHOSAL.—By opening the door to three appeals, one of which might take the case beyond the seas. He therefore thought it would be as unjust as unwise to take away this right of ejectment. He had been told that great litigation would follow such a course, and the country would be demoralised. He (Baboo Issur Chunder Ghosaul) was afraid of more serious consequences—he was afraid the course proposed would set class against class, which would not only demoralise the people themselves, but would also drag into the vortex the officers of the Government. No doubt there was an efficient Police in the country, and they would account for these violators of the law. But were there not other countries which enjoyed a better system of Police, and yet were liable to these outrages when the people felt excited from not being allowed to exercise certain natural rights?

As to the average number of days in which a regular suit was decided, and which was brought to the notice of the Council by an Hon'ble Member, he begged the Council not to put much faith in it,—statistical averages were myths and delusions. He (Baboo Issur Chunder Ghosaul) was of opinion that the average of time was no criterion to go by in these cases. They all knew now-a-days the fallacy of statistics, which could be brought to bear on any subject and for any purpose. He could bring to notice a case in which he was personally concerned. The case was instituted in November last under a decree already obtained from the High Court; evidence for both sides was completed in January last, and up to this day the case was hanging on the file of the Court. If the business in Courts was done properly, a case might possibly be determined in about six weeks, but as that was not always the case, these averages were, therefore, no criterion in these matters.

As for the learned Advocate-General's remarks on the future operation of the law as it was indicated from the procedure prescribed in the amendment he begged to say they were scarcely fair. He would first press on the consideration of the Council the principle of ejectment, and if that was acknowledged, then it would be time to consider what the procedure should be. Let them first discuss the principle asserted in Section A of the amendment, and if they agreed to it then let them proceed to discuss from Section B to Section H.; that would be the proper mode of discussing this amendment.

THE HON'BLE ASHLEY EDEN said, he entirely concurred in the view taken by the Hon'ble Member in charge of the Bill, and the learned Advocate General. He thought there must be some misapprehension as to what was required by those whose views were represented by the mover of the amendment, and as to how far that requirement was met by the amendment before the Council. It seemed to be their wish to have some more summary procedure than was afforded by a regular suit; but it had been shown by the previous speakers that that object would not be attained by this amendment. The procedure proposed was clearly shown to be twice as cumbersome as that for which it was proposed to substitute it; for instead of one suit, we should first have what was called a summary procedure, but which was in practice no more summary than a regular suit, and then a regular suit

was to follow in all disputed cases. It did not appear that under the present law there was any necessity imposed on the Collector to hear these ejectment cases out of their ordinary course, and he did not understand why they should now be treated differently in this respect than they were before. Act X of 1859 simply said that these applications for assistance to eject should be heard as any other suit under the Act. No reason had been given to show why they should be dealt with before any other suit pending under the same Act. The Select Committee had done nothing to place these suits in a worse position than any other suit, and if we had done wrong in altering the procedure in regard to them, we must clearly have done wrong in regard to all other suits, the procedure of which had been changed in precisely the same manner. The object of Section 25 of Act X of 1859 was not, as some appeared to think, to give a power which the Zemindar had not before; the object was simply to check the abuse of the power given by regulation VII of 1799, that was to say to protect the ryot from ejectment in certain cases without the cognisance of the Courts. It was believed that the power had been abused, and therefore Section 21 of Act X of 1859 limited that power when it said that—

"no ryot having a right of occupancy or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act."

The Act, however, went a little further. It went on to say that with regard to the class of ryots who were liable to ejectment by the Zemindar of his own will, and without the intervention of the Courts, if the Zemindar could not him self eject, he might go to the Collector and institute a proceeding before him, and ask for assistance to eject. But the procedure in such cases was to be exactly the same as in any other revenue suit. This Section did not bestow any right, and its omission from the present Bill would not deprive Zemindars of any right. Thus it would be seen that the Zemindar's right was rather limited by Act X of 1859, than strengthened, and even with the so-called summary process which he had under Act X of 1859, the Zemindar was in no better position than before. For the ryot had only to take proceedings under Section 15 of Act XIV of 1859, and he would be put back into possession of his land. Therefore, he (Mr. Eden) really thought that the amendment before the Council would not meet the object the Hon'ble Member had in view, and he could not support it.

MR. DAMPIER said that the amendment which was now before the Council was one which was looked upon as affecting very materially a right which was possessed by one of the two classes for whom the Council was now legislating. The ground of the amendment was that, under Section 25 of Act X of 1859, the Zemindar had the advantage of a procedure for ejecting a ryot from his holding under certain circumstances, more prompt than that of an ordinary suit under Act X of 1859. He (Mr. Dampier) thought it was desirable that every Member who voted as he purposed to vote, should distinctly state the grounds of his vote. If he were satisfied that the Zemindars had actually possessed any such procedure under the old law of thus obtaining their object more promptly than they would do by regular suit, he, certainly, in the absence of any evidence of such power having been abused or having led to oppression—such evidence as that on which the Zemindars were deprived of the power of seizing personal property in distraint for rent—would not vote that they be deprived of the advantage they possessed. The learned Advocate-General had said that Section 25 of Act X of 1859 was so vaguely worded, that it might be that Collectors and Deputy Collectors did give more summary relief under that procedure than they would have done under the procedure of a regular suit under Act X of 1859.

It appeared to him (Mr Dampier) of vital importance to ascertain how the

case really stood. He, therefore, communicated with the few officers round about who were easily accessible, and asked them what was the procedure pursued with regard to applications under Section 25 of Act X of 1859—how the procedure was in any way more rapid than that followed in suits under Section 23 of that Act?

He might be allowed to read the important parts of the answers he had received. The Collectors had sent their answers, after consulting their Deputy Collectors who were more particularly engaged in the working of the law.

Mr. Smith, Collector of the 24-Pergunnahs said:—

"The procedure in respect of an application under Section 25, Act X of 1859, so far as it lies before the Collector, differs in no respect from that followed in a suit under the provisions of Section 23. The advantages to the Zemindar arising from the Section are two-fold. The first is that he may present his application on an 8 annas instead of an *ad valorem* stamp. The second is that when the case is decided, as it generally is by a Deputy Collector, the appeal lies to the Collector and not to the Judge, the appeals to the first-named officer being according to past experience ordinarily the most promptly disposed of."

Mr. Ryland Deputy Collector of Serampore, wrote:—

"In practice the procedure on applications to eject under Section 25, Act X of 1859 is not in any way different from that of suits—indeed the words of the Section do not admit of any difference."

Mr. Monro of Nuddea wrote:—

"An application under Section 25 is treated to all intents and purposes like a plaint in a regular suit. The application filed, a summons issues, a day is fixed, and the case goes to hearing as usual. After decision, the Zemindar if he gains the case applies for the ejectment of the ryot, according to the order passed, and the Nazir dispossesses him in the usual way.

"The procedure is not in the least more expeditious than if the Zemindar had to sue regularly, and take out execution; in fact he only follows this procedure now."

Mr. Westland of Jessore wrote:—

"Cases under that Section are treated exactly like suits under Act X. The defendant is summoned, his answer heard, and a formal decision pronounced. The plaintiff has to take out execution before he actually gets the assistance he applies for."

Mr. Dampier.

It seemed clear that as Act. X of 1859 stood, this procedure was no more rapid than the procedure by suit under the Act; and one of the main propositions on which the Council were founding this Bill, was that suits under the procedure of the Bill would be as rapidly decided as suits under Act X. So that, if things that are equal to the same thing are equal to each other, suits under this Bill would be as promptly decided as proceedings under Section 25 of Act. X. And if that were so, the arguments in favor of a special procedure, which were founded on the desirability of checking recourse to force, and enabling the Zemindar to keep up his authority on his own property, would fall to the ground, because the Zemindar could quite as promptly enforce his right under this as he could do under the existing law. As he (Mr. Danpier) said before, if it could be shown that this was not so, he would vote for the retention of a special procedure, but in default of such demonstration, he should vote against the amendment.

BABOO PEARY CHAND MITTRA said, as far as he had been able to understand the answers read by the Hon'ble Member to his right, he (Baboo Peary Chand Mittra) was not clear that a regular suit and a summary suit were one and the same thing; or, in other words, except in the manner of disposing of the suit, the expenditure of money and time were the same in the two descriptions of suits. On that point the answers were not quite distinct. The learned Advocate-General had clearly shown that the principle involved in Section 25 of Act X of 1859 had all along been recognised by the Legislature. To say that this procedure was only beneficial to the landed proprietor and not to the ryot was a mistake, because if the summary procedure were given and the zemindar wickedly wished to eject a ryot, the ryot could have justice done to him at less time and and at less expense than by means of a regular suit. Therefore, as far as he could see, the amendment proposed was just, and he saw no reason why it should not be adopted. Unless

it could be shewn that this summary procedure had been an engine of oppression in the hands of landlords or had done harm, the Council could have no reasonable cause to reject it. On these grounds he begged to support the amendment.

MR. MONEY said what struck him most in the discussion, with reference to Section 25 of Act X of 1859, was that on one side those who might be said to be most interested in the matter, *i. e.*, the native gentlemen here, and the Landholders' Association, were all in favor of the retention of the Section as giving them some relief not provided for by any other Section; while on the other hand, with the exception of one, all the other Hon'ble Members here had argued on the supposition that Section 25 gave no relief which was not given by a regular suit for ejectment. It was said that the regular procedure provided by the Bill would be quite as summary as the old process under Section 25 of Act X of 1859; and therefore Section 25 became useless and might as well be omitted. He (Mr. Money) thought there was an impression, rightly or wrongly, amongst the landlords that Section 25 did give them some relief which the other Sections did not. The Hon'ble Member on his right (Mr. Dampier), had quoted the answers of some Collectors whom he had addressed with reference to the procedure under Section 25 of Act X of 1859. He (Mr. Money) saw that in a letter from Mr. Bell (not quoted) it was stated that the procedure under Section 25 was generally as follows:—

"Notice is served on the tenant to show cause on a certain day why he should not be ejected. If he appears and objects, the Collector then proceeds to enquire into the matter as in an ordinary suit; if he does not appear, the Collector, after examining the applicant, passes an order *ex parte*, and the ryot is thereupon without any further application to the Civil Court ejected."

The result was that having got an *ex parte* decree from the Collector, Section 15 of Act XIV of 1859 could not be brought to operate against the Zemindar. If the landlord eject *proprio motu*, then the ryot could be restored to possession under that Section. But if the Zemindar went to the Collector and the ryot made no defence and the suit was decided against him, the ryot could not be reinstated under Act XIV of 1859. What he could do was to bring a regular suit to set aside the decision of the Collector. Now, it was stated that in effect this procedure was practically injurious, because it exposed these cases to two series of suits instead of to one; but though it was shewn that about 1,000 applications were made annually under this Section, it had not been shewn how many suits had been brought to dispute the right of ejectment exercised by the Collector. Until we knew that, it would be impossible to say whether this was a practical evil or not. Another advantage under Section 25 was that it merely required an 8 annas stamp; whereas in a regular suit for ejectment the whole weight of the stamp duty would have to be borne. He (Mr. Money) confessed that to him it appeared that, as far as possible within the terms of this law, we were bound to give to the Zemindar any summary assistance in our power. This principle was recognised, and it had been generally supposed to have been recognised, in Section 25 of Act X of 1859. When the discussion first took place he was prepared to propose an amendment on the amendment before the Council to the following effect in Section C:—

The omission of the words "if upon examination of the person presenting such petition, the applicant appears to be entitled to the relief he seeks."

And as regards Section E, he was prepared to recommend that the Court should give the relief sought for in those cases and only in those in which no question to be tried appeared to exist between the Zemindar and the tenant.

He thought, with these two amendments, the Sections proposed by the Hon'ble Member opposite (Mr. Sutherland) would afford a decidedly more summary form of procedure than the institution of a regular suit. But after hearing the learned Advocate-General and the Hon'ble Member in charge

of the Bill, he was quite prepared, if the difficulty of stamp duty could be got over, and if preference were given to this class of cases over all other classes of regular suits, to oppose the amendment, and to let the omission of Section 25 stand. But at present this was not the point before the Council. One Hon'ble Member asked why precedence should be given to this kind of suits over others. It appeared to him (Mr. Money) that the feeling of all those most deeply interested in the matter was that some kind of preference should be given to them in regaining possession of land which was not in the rightful possession of the persons whom they wished to eject. He thought Section 25 of Act X of 1859, by which the appeal lay to the Commissioner, and which was to some extent a summary form of procedure, did give preference to this class of cases over others, by not making them the subject of a regular suit.

MR. SUTHERLAND said, he had listened very carefully to the speeches of those Honble Members who had opposed the motion, and he was sorry to say that he was still far from being convinced of the advantage of withdrawing this procedure. Hon'ble Members had elsewhere declared that there was, independent of Section 25 of Act X of 1859, an inherent right in the Zemindar to eject a ryot under the circumstances described in that Section. No doubt Zemindars had that right, and would proceed to put it in practice; but he had not heard any answer to the remarks he had ventured to make as to the scandal to the country and the evils that would arise if the Zemindar took the law into his own hands, and ejected at his discretion. He thought, therefore, that a legal procedure for the exercise of that right should be given, and he ventured to predict, on the authority of men conversant with the subject, that the withholding such a procedure would lead to much increased litigation in land matters throughout the country.

THE ADVOCATE-GENERAL said, he wished to correct a misapprehension. As far as he was concerned he never intended to say, and he did not think that he did say, that the Zemindar at this time had no right to eject a ryot without process of law, and that if they had the right, the right was given to them by Section 25 of Act X of 1859. He did not say that they had the right, and he not did say that they had not.

MR. MONEY said that it appeared to him that the matter was so important, and the question of the difference of stamp duty involved so important an element, that perhaps it might be desirable to let the matter stand over for re-consideration and discussion.

The further consideration of the Section was then postponed.

The consideration of Section 27, which provided for the registry of transfers of talooks, &c., was postponed.

Section 28 provided that non-registered transfers should not be recognised.

MR. MONEY moved the omission of the Section, and the addition of the same words to Section 64. He said, in Section 106 of Act X of 1859 it was provided at the end that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force, is required to be registered in the sherishteh of the Zemindar or superior tenant, shall be recognised unless it shall have been so registered or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

But that Section referred to cases where the Zemindar was selling under-tenures for arrears in execution of decrees, and the provision in it applied solely to the case of a third party coming in and asserting that he, and not the defendant, was the proprietor of the under-tenure, and it declared that no such transfer should be recognised unless the transfer was registered in the Zemindar's sherishteh. He (Mr. Money) noticed that the effect of these words being placed in their present position in the Bill was to give to them a different meaning. A. sells his under-tenure to B., such transfer of the under-tenure not being registered; then if a dispute arises between A. and B. with regard to that transfer, such a transfer would

not be recognised under this Section. Now that was quite a different principle from that which led to the introduction of these words in Section 106 of Act X of 1859. The words inserted where they now were provided a penalty for non-obedience to the provisions of the Section which preceded, and declared that under no circumstances should a non-registered transfer hold good. It appeared to him that this was a decided change in the law. In a case decided by the High Court in 1867, it was held "that no express penalty for omission to register is provided" and that "it appears quite sufficient that the Zemindar should retain his right to sell the tenure for arrears of rent."—Case 243 of 1867, Nobeen Kishen Mookerjee *vs.* Shib Persaud Pattuck. This ruling laid down that in the opinion of the Judges nothing in Act X of 1859 vitiated the unregistered transfer of a tenure when not sold for arrears of rent. It also showed that the Judges considered such a penalty unnecessary and a severe measure. It seemed to him (Mr. Money) also that the Section under consideration might involve great hardship to an innocent purchaser of an under-tenure. On this ground chiefly he opposed it. He did not know that he should be prepared to oppose the Section simply because it made a change in the law. He therefore moved to omit the Section from this place, and to place it at the end of the Section which corresponded with Section 106 of Act X of 1859.

MR. RIVERS THOMPSON said, that he might simply explain that one of the criticisms made on the Bill was that there was no regularity of order observed in the arrangement of the Sections, and it was with reference to that that this declaratory part of Section 106 was brought out from the place which it held under the Procedure Sections, and put in here. It might be that the view which the Hon'ble mover of the amendment had taken was right, that the transfer of these words to this part of the Bill gave them a more extended application, and the only question was whether the extended application was desirable or not. Should not in all cases the omission to register entail the voidance of the transfer? If it was so held, the Section might stand in its present place: it existed under Section 106 of Act X of 1859, and it was only a transfer from one part of the Bill to another.

MR. MONEY said, either the law did impose a penalty for non-registration of transfers of under-tenures in every case, or it did not: if you admit that it did not, then the transposition of these words to this part of the Bill effected an important alteration of the law.

THE PRESIDENT said, he would submit whether, if it was the case that the transposition of these words from one part of the Bill to another would make a material alteration in the substantive law, it would not be a departure from the principle agreed to at the last meeting of the Council.

THE ADVOCATE-GENERAL said, he understood the object of the Hon'ble Member to be this. Without pronouncing any opinion as to whether a non-registered tenure should or should not be void, the result was that if these words were appended to Section 64 of the Bill, corresponding with Section 106 of Act X of 1859, a non-registered tenure would be void only when the under-tenure was sold for arrears in execution of a decree: the effect of non-registration would not go beyond that. But the transposition of that portion of the law which provided for the effect of non-registration did alter the law, because it rendered a non-registered tenure void for all purposes. Therefore he (the Advocate-General) understood the object of the amendment to be to alter the effect of non-registration from what it was before.

The motion was then agreed to.

Section 29 was follows:—

"No sub-letting by any cultivating tenant shall have any force or effect, nor be recognised by any Court unless and until the person immediately entitled to receive the rent from such cultivating tenant, shall have in some writing signed by him signified his consent to such sub-letting."

MR. MONEY said, this Section also changed the law, but he thought it was a greater change in the law than the preceding Section. Hitherto tenants, as a rule, could and did sub-let; and because they did so, Hon'ble Members thought it advisable to introduce this Section. In Section 112 of Act X of 1859 it was stated that the produce of the land was held to be hypothecated for its rent. He understood the object of the present Section was simply to carry out the principle there laid down, but in doing this the Section was framed in a way which made it objectionable for more than one reason. In the first place a large class of officers in the mofussil would probably understand the wording of the Section to apply to sub-letting which had taken place before the passing of this Act. He thought that would be a wrong interpretation of the meaning of this Section, but it was very possible that such a construction might be put. Therefore, so far, if the Section were retained, it should be made clear that it did not apply to sub-letting made before this Act was passed.

But he had other objections.

He (Mr. Money) did not know what a cultivating tenant was. In Act X of 1859, there were only three classes of ryots defined: Ryots with rights of occupancy, those who held at fixed rates, and tenants-at-will. When the term "cultivator" was used in Act X of 1859, it meant the man who cultivated the land, but in any suit brought under this Section it would mean the man who was not cultivating, but who had sub-let his tenure. In one of the papers before the Council, that by Baboo Onoocool Chunder Mookerjee, the Council were asked for a proper definition of the word "ryot." If great difficulty had been felt in a correct definition of the term "ryot," greater difficulty would, no doubt, be found in framing an accurate definition of the term "cultivating tenant." It was well known that small holdings were given by Zemindars to persons whom they did not expect to cultivate. In a case coming under this Section, how should we ascertain whether a man was a cultivating tenant; perhaps for some years he had been in the habit of sub-letting, or he might have cultivated in one year and sub-let in another. He (Mr. Money) thought, therefore, that there would be great difficulty in knowing what constituted a cultivating tenant. At present he saw no provision in Act X of 1859 to prevent A., who took a lease from a Zemindar, from sub-letting his tenure to B. He might sub-let, and questions between him and B. were questions which would depend on the validity of the engagement entered into between them. But this Section said that no sub-letting should be recognised unless with the consent of the superior landlord. That took away from the man who had taken a lease from a Zemindar the right of sub-letting, or if he did sub-let, it deprived him of the power of compelling the sub-lessee to carry out his engagement. He (Mr. Money) fully admitted the propriety of the declaration of principle which was expressed at the beginning of Section 112 of Act X of 1859, that the produce of the land was held to be hypothecated for its rent, but he did not see why, in trying to give the zemindar his rights, we should introduce a Section which went further than that object. It appeared to him that as the Zemindars were aware that, according to the law and the High Court decisions, distraint could only be levied for the arrear due from the actual cultivator, they had the remedy in their own hands. The zemindar who gave a lease to a tenant, need only insert a condition that such tenant had not the right to sub-let. He would, therefore, move the omission of Section 29, and the sbstitution of the following:—

"No sub-letting by any tenant shall debar the Zemindar or the zemindar's representative from whom such tenant holds from the exercise of the right of distraint when the lease, under which the tenant holds, contains a provision that the tenant shall not sub-let or when the tenant holds without a written lease."

MR. RIVERS THOMPSON said, the Hon'ble Mover of the amendment had explained the reasons why this Section was introduced into the

Bill. It was in the interests of the Native Members of the Council opposite, who pressed on the Committee that under Section 112 of Act X of 1859 the Zemindar could not distrain except from the actual cultivator of the soil, and that in very many cases where the tenant had sublet, when the Zemindar went to distrain, he was met by the answer that his tenant was not the cultivating tenant, and therefore it was impossible for the Zemindar to distrain. The Hon'ble Member had urged that the wording of the Section was not clear, the words apparently having a retrospective effect; but he (Mr. Thompson) did not find that the Section which the Hon'ble Member proposed to substitute, would clearly be any improvement in that respect. It was a new Section, and if the Council absolutely adhered to the principle adopted, that no substantive provision should be introduced, he personally would be willing to allow the Section to be omitted. It was in the interests of the gentlemen opposite, on a point materially affecting landed proprietors, that an attempt had been made to remedy the evil complained of.

BABOO ISSUR CHUNDER GHOSAUL said, it devolved on him to explain why this Section was introduced. The reason was that in Section 112 a right was given to the Zemindar which he could never exercise—the right so given to him was the right of distraint. When some cases under this Section came before the High Court, it was ruled, owing to a defect in the language of the Section, that the produce of the land could not be distrained if a tenant stood between the Zeminder and the cultivator of the soil. That decision was contrary to the spirit of the declaration made in Section 112 of Act X of 1859, which was that "the "produce of the land is held to be "hypothecated for the rent payable in "respect thereof." And in consequence of that difficulty he (Baboo Issur Chunder Ghosaul) thought that some provision should be made to render the Act more explicit. He did not wish that any change should be made in the substantive law, but that the matter should be made explicit, so that the power given to the Zemindar to distrain might be put in force. He would therefore support the amendment.

THE ADVOCATE-GENERAL said, he did not approve of the Section as it stood; and as to the proposed amendment, he thought he could satisfy the Hon'ble Member that it did not meet the difficulty. He (the Advocate-General) would just state as shortly as he could the reasons why he thought that neither the Section as it stood in the Bill, nor the proposed amendment, really met the practical difficulty. The power of distraint arose under Section 112 of Act X of 1859, which used the expression "cultivator of the land," which meant the person who was in possession and paying rent on the one hand, and not receiving rent on the other, but taking the produce. And the 112 Section laid down the principle that rent, which was payable by the actual cultivator of the land, was to be secured by a lien on the produce, to be worked out by distress and sale. There was this difficulty that the person who owed the rent and the person who might be liable to pay that rent for a longer or shorter period under a lease, placed himself out of the reach of the proprietor. He then would be in the position of a person paying and receiving rent; and Section 112 of Act X did not provide for a distraint of the produce except from the person actually cultivating the land. Therefore he should propose an addition, which by way of an interpretation of the existing law would explain what the words "the cultivator of the land" intended. Neither the 29th Section as it stood in the Bill nor the Section proposed to be substituted would get over the difficulty; because in the Section as it stood it said that no sub-letting by any cultivating tenant should have any force or effect unless the person immediately entitled to receive the rent from such tenant should have consented to such sub-letting. But that Section still left this difficulty. When the person entitled to receive

rent came to distrain the produce, he was met by an under-tenant who said "I have paid my rent; I am the cultivator and am not in arrear;" and the same objection applied to the Section proposed to be substituted by way of amendment. He (the Advocate-General) thought the way of doing what was desired was to omit Section 29, and to add at the end of Section 68 something to this effect, that any cultivator of the land who sub-letted should, notwithstanding such sub-letting, continue to be regarded as the cultivator within the meaning of the preceding Section, unless the proprietor immediately receiving the rent should have consented to such sub-letting. At present therefore he (the Advocate-General) should confine himself to supporting the omission of Section 29.

MR. MONEY said, he merely wished to state that it would perhaps be the most satisfactory mode of proceeding if he withdrew the amendment for the substitution of the new Section; he would then be able, when the Advocate-General's proposed Section came up for discussion, to make any remarks he thought fit.

The motion to omit Section 29 was then agreed to.

MR. DAMPIER moved the introduction of the following new Section after Section 34:—

"No suit or proceeding shall be instituted in any Court but within the time within which the same might have been instituted before a Collector if this Act had not been passed."

He said, that in going over the Bill, it had struck him that, irrespective of what he might call the ordinary limitations of three years and one year which were common to that Bill and to the Acts which it superseded, there were certain exceptional cases in which a special and shorter period of limitation was fixed by the old Acts for the institution of proceedings; and as the Bill now stood, some of the cases would escape that shorter limitation. He would illustrate his meaning by a reference to the preceding Section of the Bill (34), regarding a deposit of rent. That Section ran:—

"No suit shall be brought against the person making the deposit, or his representatives on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted within six months from the date of service of the notice in Section 4 of this Act mentioned."

It would be observed that if the notice of deposit was served before the repeal of Act VI of 1862, it would be a notice served not under Section 50 of this Bill, but under Section 5 of Act VI of 1862, and therefore Section 39 of the Bill would not apply to the case; on the other hand if the Bill had been passed before the six months' limitature had expired, then a suit would not be refused after the six months under Section V Act VI of 1862, because that Section would have ceased to have effect. Another case would occur in Section 30, which provided that—

"All suits arising out of the power of distraint hereinafter conferred on zemindars and others or out of acts under color of the exercise of the said power as in this Act is particularly provided, shall be commenced within the period of one year from the date of the accruing of the cause of action, and not afterwards."

If the suit were one regarding the exercise of the power of distraint not under this Act, but under Act X of 1859, in which the cause of action accrued just before the cessation of Act X of 1859, but that Act having ceased to operate before the one year's limitation had run out, then a suit could no larger be refused under the Clause of Act X of 1859, which necessitated that suit being brought within one year, for the Clause would no longer be in existence, and on the other hand Clause 30 of the Bill did not refer to acts committed in the exercise of powers of distraint under Act X; so that without such a Clause as he (Mr. Dampier) now proposed, in the cases he had described, the special limitation which the superseded Acts had applied, and which it was the policy of this Bill also to apply, would not have effect, and they would, therefore, only be liable to the ordinary rules of limitation which applied to civil suits generally. He had been referred to Sections 108 and 109 of the Bill, but

The Advocate-General.

they did not meet the point he had in view. He was speaking of those suits in which no proceedings had been taken. Sections 108 and 109 touched those suits only which might be instituted before the existing laws became inoperative by the passing of the Bill.

Mr. RIVERS THOMPSON said that he did not very clearly follow all that the Hon'ble Member meant by the amendment before the Council. It seemed that his objection was that in certain classes of cases instituted before the coming into operation of this Act, neither the procedure of this nor of the existing Act would apply. Of course when the provisions of this Act came into force, its provisions would apply to cases instituted from such date.

THE ADVOCATE-GENERAL said, it appeared to him that the amendment proposed was open to this objection that as the general scope and object of the Bill was the re-enactment of the provisions in force of Act X of 1859 and Act VI of 1862, it was desirable to make the Bill as complete as it could be. The cases to which the proposed amendment referred, were cases in which something had been done, but in which no suit was pending, the amendment therefore necessitated a reference to both the new and the old Act. Therefore he thought the better way would be not to introduce the proposed Section, but to alter Section 30, and Sections 32 and 34, so as, instead of limiting their provisions to suits arising out of the power of distraint conferred by *this* Act, or questions of enhancement under *this* Act, or deposits under *this* Act, to make the Sections general, so as to include acts done under the existing Acts, although no suit was pending: otherwise it would be to a certain extent keeping on the Statute Book some of the provisions of the existing laws.

MR. DAMPIER having expressed his willingness to adopt the suggestion, some verbal amendments were made in Sections 30, 32, and 34.

Section 35 was agreed to.

Section 36 related to suits instituted by Naibs or Gomastahs.

MR. RIVERS THOMPSON said, that he did not think there was any necessity for the retention of the Section. It was almost a copy of a Section in Act VIII of 1859, and the procedure of that section would apply to cases under the Bill. He would, therefore, move the omission of Section 36.

The motion was agreed to.

Section 37 related to the cognizance of suits under the Act.

THE ADVOCATE-GENERAL said, he had to propose the substitution of a Section which he thought would make the meaning clearer as regards the use of the words—

"all suits, which at the time of the passing of this Act are, by virtue of the provisions of Act X of 1859, passed by the Governor-General of India in Council, or of Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, cognizable by any Collector of land revenue;"

Which might be taken to refer to suits which arose after the passing of this Act, in respect of something done under the previous Acts. He would propose to substitute the following Section:—

"From and after the time when this Act shall commence and take effect in any place, the jurisdiction, save as regards any suits then pending, of the Collectorate Courts in such place, under Act X of 1859 of the Governor-General in Council, and Act VI of 1862 of the Council of the Lieutenant-Governor of Bengal, to entertain suits shall cease: and all suits brought for any cause of action arising under either of those Acts or this Act shall, from such time and in such place, be cognizable by the Civil Courts according to their several jurisdictions."

The motion was agreed to.

Section 38 was agreed to.

Section 39 provided that the cause of action in certain suits should be held to be local.

THE ADVOCATE-GENERAL said, he wished to substitute another Section for this, with the view of shortening it. Although, of course, the suits specified in the latter part of the Section as it stood, were not suits for land, still they were suits which related to land just as much as suits for the delivery of a pottah or the cancelment of a lease.

He therefore proposed to collect all the suits under the Bill and put them together, but with the permission of the Council he would reserve his amendment until the question with regard to Section 27 had been gone into, because as regards the question as to the right of a person taking the transfer of a tenure, to bring a suit to compel the Zemindar to register, he proposed to insert a specific mention of that among the other suits in Section 39. But until the Council had determined that matter, it would be premature to amend the Section before the Council.

The further consideration of the Section and of the Bill was postponed.

The Council was adjourned to Saturday the 15th Instant.

Saturday, 15th May, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., Advocate-General.
The Hon'ble Ashley Eden.
H. L. Dampier, Esq.
A. Money, Esq., C. B.
A. R. Thompson, Esq.
H. Knowles, Esq.
Baboo Peary Chand Mittra.
T. Alcock, Esq.
H. H. Sutherland, Esq.
Koomar Sutyanund Ghosaul.
Baboo Issur Chunder Ghosaul, and
Baboo Chunder Mohun Chatterjee.

MOFUSSIL POLICE.

THE HON'BLE ASHLEY EDEN postponed the motion which stood in the list of business, for the passing of the Bill to amend the constitution of the Police Force in Bengal.

RECOVERY OF WATER RATES.

MR. DAMPIER moved for leave to bring in a Bill to provide for the recovery of rates for water supplied for purposes of irrigation. He said, the Council would remember that when Act VIII of 1867 was passed, the Orissa Irrigation Works were the property of a company. The arrangement made by contract between the Government and the Company, was, that the Company should look to the Government for payment of the value of the water which they might supply for irrigation and other purposes, to the extent to which the cultivators and others might be willing to take such water. The Government was to recoup itself for the value it paid to the Company by recovering a water rent or rate from those who took the water.

To enable the Government to do that, this Council passed the Act of 1867. Since then the Government had purchased those works, and under the altered proprietorship, the terms of the Act of 1867, which spoke of the water being supplied by the Irrigation Company, were no longer applicable. This Bill was brought in to provide for the recovery of rates for water supplied by the Government direct, and opportunity would be taken to empower the Government to do so, not only in Orissa, to which province the existing Act was applicable, but also in other places, in Behar and other parts of Bengal, where works of irrigation might be opened hereafter. The general principle of the Bill which he proposed was that all questions as to the supply of water and the cost at which it should be supplied, should be decided according to certain rules, to be passed by the Executive Government, under powers which he proposed to give to the Lieutenant-Governor. There would be a special staff of Officers connected with irrigation works, thoroughly familiar with the details, who would be vested with powers for the disposal of all such questions that might arise, and their decision, with the decision of such appellate authority as might be appointed under the Bill, would be final, on such questions of supply and cost.

The amount due being so decided, it was proposed to give to the Government precisely the same powers for realising the dues, as the law for the time being gave to it in respect to the

collection of other revenue demands.

It was proposed to give Government the power of appointing farmers for the collection of water-rates. The farmer would have no power except for the collection of rates already fixed by the special officer as due, and for the collection of those rates, it was proposed to give the farmer precisely the same powers as farmers of Government revenue would have for the collection of rent.

The motion was agreed to.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

Section 40 was agreed to.

Section 41 provided that any person obstructing a measurement ordered by the Court shall be liable to a fine.

MR. DAMPIER enquired by what authority the fine could be imposed?

MR. RIVERS THOMPSON said, that it was intended, when the Select Committee had the Bill before them, that the Civil Court whose orders were resisted, should impose the fine. It was an addition to the Bill. It had been represented that attempts at such obstruction were not met by a penalty, and that a small fine would secure the proper observance of the order of the Court. He would note, however, that the amendment of the Code of Criminal Procedure which had lately been passed, contained a provision that fines imposed under other laws might be adjudicated by a Magistrate. It had been the intention to leave the imposition of the fine to the Civil Court, but Act VIII of 1869 vested the cognizance of such cases in Magistrates.

THE HON'BLE ASHLEY EDEN remarked that the fact of the Magistrate having the power would not take away the right of the Civil Court to impose the fine, if it thought fit to do so.

The further consideration of the Section was then postponed.

Section 42 provided that the measurement of land, when it could not be ascertained who were the persons liable to pay rent, should be made by the Collector on the order of the Court to whom an application should have been made for the measurement of such lands.

MR. MONEY said, the purport of the amendments in this Section of which he had given notice, was simply that the power to measure lands, which was given by this Section to the Collector and not to the Civil Court, should be given to the Court. There was a good deal to be said for leaving to Collectors the disposal of certain classes of cases under Act X. of 1859, especially suits for arrears of rent, but Government and this Council had decided, and wisely decided, that the transfer to the Civil Courts should be a general one, and that it would be better for one class of Courts to dispose of all cases of a civil nature: he thought, therefore, that that principle should not be set aside except for some very good reasons. There was nothing exceptional in cases of this kind to justify a departure from that principle. He had been given to understand that the ground for the difference of procedure in this matter was partly on account of the precedent of Civil Courts making over to Collectors the carrying out of butwarahs, and partly because it was supposed that the work here made over was very similar to settlement work, and would, therefore, be better done by the Collector than by the Civil Court. Those, he believed, were the only two reasons why this anomaly was left in the Bill; but he (Mr. Money) thought it would be found that those reasons were scarcely sufficient. He would take the case of Butwarahs. When a Civil Court had a dispute before it, and when it decided that the disputant was entitled to have a partition of the subject of the dispute, the Court transferred the disposal of the matter from its own Court to the Collector. It must be remembered that the thing to be done was not merely to

apportion lands. One of the chief points in a butwarah was the allotment of the revenue, and where A. or B. got his share of an estate separated, he also must have a separate allotment of revenue. The Court could not decide what amount of revenue should be allotted to A. or B.: that was the work of the Collector. But there was no parallel between such a butwarah and cases under this Section. Here there was a dispute between the proprietor and the ryot, and the Government had no interest in the matter as in a case of butwarah. There was also another essential difference. Where the Civil Court made over a case to the Collector for a butwarah, it really transferred the case from its own Court to that of the Revenue Authorities, and the action of the Collector was afterwards subject to the usual supervision of the Revenue Authorities. But in the class of cases here intended to be made over to the Collector, the decision of the Collector was not a decision appealable as all other decisions were, but the matter came back again to the Civil Court for adjudication. The Civil Court passed the case to the Collector, the Collector issued his order, and the case went back to the Court. This double jurisdiction would be sure to lead to difficulties.

We now came to cases of settlement. The best plan would be to look separately at each kind of work mentioned in this Section. First, the Collector was required to measure the land. He (Mr. Money) submitted that that was exactly the kind of work done by a Civil Court Ameen every day. Next the Collector was to ascertain and record the names of the persons in occupation of the land; this was simply ascertaining a fact which the Civil Court was equally competent to do. Then, on special application, the Collector was to ascertain, determine, and record the tenures and under-tenures. This again was simply ascertaining a question of fact. Then the Collector had to do the same as regards the rents payable, and the persons by whom the rents were so payable. The Civil Court was quite competent to do that also. He (Mr. Money) thought, however, that there may be some mistake as to the meaning of the words "rents payable," and that it may have been thought that the meaning was that the Collector should decide the rates of rent that might be demandable. As to this matter, the Board of Revenue had ruled as follows:—

"By Section 10, Act VI of 1862, B. C., a Collector is required, under certain circumstances, on the special application of a proprietor, or other person entitled to receive the rents of an estate or tenure, to ascertain, determine, and record the tenures and under-tenures comprised in such estate or tenure, or any part thereof, the rate of rent payable in respect of such lands, and the persons by whom, respectively, the rents are payable."

"In the opinion of the Board of Revenue, the law thus quoted does not authorise a Collector to alter the rent of a single tenant of such lands. He has only power to ascertain, determine, and record the rent, at the time of the enquiry, actually payable by each tenant on the lands, to prepare, in fact, a rent-roll."

If the Collector was simply to prepare a rent-roll, that was exactly the kind of work which the Civil Court did in all cases of suits for mesne profits. Now the Collector, in settlement cases, had not to ascertain, determine, and record what each class of ryots paid, but what they should pay. He had not simply to make a rent-roll. In the instructions to Settlement Officers, it was laid down:—

"It especially behoves a Settling Officer not to conclude too hastily that what appears to be an appropriate settlement is actually so. Fertility of soil is not the only circumstance which regulates the power of land to pay rent. The demand for land as affected by the denseness or otherwise of the population; the salubrity or inclemency of the climate; and the abundance or scarcity of good culturable soil in the vicinity; must all be taken into account."

"In Bengal, Settling Officers have not only to distribute the newly assessed revenue among the villages of a pergunnah, but also to determine what shall be paid by each individual ryot for the land he holds."

"The Settling Officer must, by careful detailed enquiry, ascertain the causes which give rise to inequalities, reduce the demand where it presses too heavily, and raise it where it is too low; where good and sufficient cause is found for very considerable variation from the accustomed average rate, he should enter

clearly and succinctly into the subject, in the Settlement Proceeding."

He (Mr. Money) would not trouble the Council with other instructions that were given; but what he had said showed that the work imposed on the Collector under this Section was not settlement work. For settlements he would have to find out what rent should be paid: here he was simply to find what each class was paying. It was a simple question of fact, which ought to be determined by the Court itself. There was also another objection to sending these cases to the Collector. Civil Courts had no jurisdiction over Collectors. An injunction sent to a Collector to do work of this kind would not be attended to quickly, and there would be great and unnecessary delay. Again, in settlements, when the Ameen had done his work, a Deputy Collector went to the spot in every case; he tested the Ameen's work, and finally determined what the assessment should be. Here it could be scarcely expected that the Collector or Deputy Collector would go down to the spot. He (Mr. Money) saw no object whatever in making these cases over to the Collector, and would, therefore, move—

"The omission of the words "order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector, together with the sum so deposited for costs, and the Collector shall thereupon"—

And the substitution of the word 'Court' for the word 'Collector,' in lines 26, 33, 37, 4, and 43 of the same Section."

MR. RIVERS THOMPSON said, that it would certainly appear that in transferring rent-suits to the Civil Courts, the Revenue Authorities were very glad to get rid of the work altogether, for they would not acquiesce in any part of it remaining in the Collector's hands. In the discussions which arose on this question in Select Committee, they had been guided partly by statements made to them by officers in the Mofussil, and especially by the Commissioner of Dacca, who brought to notice that this duty, which it was intended to impose on the Civil Courts, was really settlement work, which ought properly to be left to the Revenue Authorities. Considering the nature of the work which would have to be done, he (Mr. Thompson) thought it would be far better that it should be done by a Revenue Officer, who was accustomed to that kind of work, than by an officer who was stationary, and had not much experience of local enquiries and investigations. It would be seen that there were two forms of measurement that would have to be made: first there was the ordinary measurement of land and the ascertaining and recording the names of the persons in occupation; but on the special application of the proprietor, the Collector would have to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable, and the persons by whom those rents were payable. In discussing the matter, the Select Committee thought that they had the analogy of cases referred by the Civil Courts to the Collectors under the Butwarah Laws, and also the analogy of cases formerly transferred to the Civil Courts in resumption proceedings. This latter law had since been repealed, but formerly the Courts could refer resumption suits to the Collector for report. It was on the analogy of these two kinds of enquiries, and considering the nature of the duties to be performed, that we thought it would be better to leave the duty in the hands of the Revenue Department. The Hon'ble mover of the amendment had given, in detail, what the Collector had to go through in Butwarah and Settlement cases, and said that the duties in the measurement of lands were not the same. The procedure in the Settlement Laws was defined very summarily in these few words:—

I. Identification of the land.
II. Measurement.
III. Testing the measurement.
IV. Adjustment of rents.
V. Adjustment and record of rights.

He Mr. (Thompson) thought the work under this Section would fall within the definition of these enquiries

The Collector was here required to enquire into the tenures and under-tenures on the land, and the rates of rent payable, and the persons by whom those rents were payable. The nature of the duties was, therefore, very similar to those which the Collector was called on to perform in the course of his duty as a Revenue Officer making a settlement. It was on these considerations that the Committee determined that the work should be left in the hands of the Collector, and he (Mr. Thompson) was not satisfied that it would be better to transfer these duties to the officers presiding in Civil Courts, who would always be engaged, and who would not have that experience in local investigations which Collectors had enjoyed. He would also notice that the class of cases that would be transferred to Collectors, would be very limited. He believed that the number of cases from the year 1862 amounted to 21. It might be said that the cases being so few, the imposition of this duty on the Civil Courts would not hurt them. But, certainly, it would not hurt the Collectors either. On these grounds he (Mr. Thompson) should prefer to leave the duty in the hands of the Revenue Authorities.

MR. MONEY said, he would simply remark that he perfectly agreed with the Hon'ble Member that the different sorts of work which he had enumerated as work which the Collector performed in making settlements, were to a certain extent the duties required under the present Section of the Bill; but they were also the very kinds of work which the Civil Courts had to perform in all suits for mesne profits. It seemed to him (Mr. Money) no argument that because the Collector had to do the same work also, therefore this work should be transferred to them.

THE ADVOCATE-GENERAL said, he did not know if the Hon'ble mover of the amendment had adverted to this, that the amendment which he had proposed would require the omission or great alteration of the next Section of the Bill. He pointed that out because what followed the 42nd Section seemed to afford a reason why in this 42nd Section the measurement and carrying out of the enquiry was given to the Collector.

And really the effect of the 42nd Section, coupled with the 43rd Section, was no more than this, that instead of the Court appointing an Ameen to measure the land, and to ascertain, determine, and record the tenures and under tenures, which, of course, would be subject to the determination of the Court on the report of the Ameen, the enquiry was left to the Collector. Not that the Collector was to do it himself personally, but he was considered as the authority which would be best able to place the Court in possession of details in cases which would be appealable under Section 43.

The Council then divided:—

AYES 4.	NOES 9.
Baboo Issur Chunder Ghosaul.	Baboo Chunder Mohun Chatterjee.
Koomar Satyanund Ghosaul.	Mr. Sutherland.
Baboo Peary Chand Mittra.	„ Alcock.
Mr. Money.	„ Knowles.
	„ Thompson.
	„ Dampier.
	The Hon'ble Ashley Eden.
	The Advocate-General
	The President.

The motion was therefore negatived, and the Section was passed as it stood.

MR. DAMPIER said, under a Section of the old Act, Section 10 of Act VI of 1862, B. C., there was a provision to the effect that in conducting these enquiries the provisions of Section 67 of Act X of 1859 should apply to any proceeding of the Collector instituted under that Section. Those enquiries still remained for the Collector to conduct; and if the provision of Section 67 of Act X of 1859 was omitted, how was the Collector to proceed as regarded witnesses. Section 67 said:—

"The provisions of the Regulations and Acts, and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to

the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act."

In the Section of the Bill which had taken the place of section 10 of Act VI of 1862, there was no similar provision giving the Collector power to examine witnesses, procure their attendance, &c. He (Mr. Dampier) would ask whether the Hon'ble mover of the Bill did not think it necessary to retain that provision.

MR. RIVERS THOMPSON said, that he should have been prepared with an amendment to meet that, but awaited the decision of the amendment which had just been negatived. If the question of measurement and enquiry was transferred to the Civil Courts, his amendment would not be necessary; but as the Council had decided that these cases should be transferred to the Collector for report, it would be necessary to make a provision such as that suggested. He did not think that the amendment which he would be prepared to move at the next meeting would necessitate any change in this Section.

The Section was then agreed to.

Section 43 was passed with a verbal amendment.

Section 44 was agreed to.

Section 45 provided that a special register should be kept of all suits under the Act.

MR. DAMPIER enquired why there should be a provision of law that the record of certain suits should be kept in a special register?

MR. RIVERS THOMPSON explained, that if the list of suits under the Act was to be mixed up with the general list of Civil suits, they might come to be regarded as ordinary Civil suits. The keeping of a separate register might be of great use: it might have the effect of directing attention to these cases, and the High Court might be in a better position to watch the working of the law under the new Act.

THE ADVOCATE-GENERAL thought that the keeping of a special register might indirectly have that effect, and whenever necessary any particular suit might afterwards be put in the general list.

Section 45 was then agreed to.

Section 46 related to the form of plaint in suits for arrears of rent.

MR. RIVERS THOMPSON said, a communication had been made to the Council since this Bill had been published, by a gentleman who took great interest in the matter, and who had proposed to add some words to this Section, with a view to making all actual tenants parties to every suit between a Zemindar and intermediate tenant. It had been represented that in the absence of such a provision it was the common practice in suits for enhancement of rent to get up cases under false pretences, in which either there was no defence, or a sham defence; and that the decrees obtained in such cases were used for the purpose of establishing the higher rate per beegah in any particular locality.

He (Mr. Thompson) brought the matter to notice, because it was recommended to the Council by a gentleman taking great interest in this Bill. He himself did not think that the Council could provide for all cases of rascality and the using of fraudulent decrees, which unscrupulous persons might choose to adopt, and it was quite certain that under the provisions of the Civil Procedure Code full power was given to the Court to secure the presence of all parties interested; and he thought the matter must be left to the discretion of the Court. It would be a hardship in a great many cases if we made it compulsory that in every suit all underholders should also be made parties to the suit: for himself he did not see that there was any necessity to do so.

THE ADVOCATE-GENERAL said that in support of what the Hon'ble member had said, he might state that the practical protection against collusive suits of this kind being carried on, was that when such suits were obtained they were either inadmissible in evidence or their character was regarded as worthless, and he was quite sure that before

long this would be clearly understood in all the Courts.

The Section was then agreed to.

Section 47 empowered the Court to award to the plaintiff additional damages not exceeding 25 per cent.

BABOO PEARY CHAND MITTRA said, this Section was incomplete. If a ryot made a tender of payment to the Zemindar at this mal cutcherry and the money was not received, he might go to the Collector and deposit the amount. The ryot was necessarily put to expense in making the deposit, and there was no provision enabling the ryot to recover the cost of making such deposit. It might be urged as an objection to this, that if this indulgence were given to the ryot, the ryot would in many cases not go to the Zemindar at all; but it was nothing but fair that when a tender was not accepted by the Zemindar, and the ryot was forced to make a deposit elsewhere, he should be entitled to recover the cost of making such deposit. He would therefore move to add the following words to the Section:—

"On proof of a tender of payment at the mal cutcherry, the ryot shall be entitled to recover the costs of making such deposit."

MR. RIVERS THOMPSON said, it had been objected that the authority which the Zemindar had of removing without cost the amount deposited in Court by a ryot, would induce him to refuse to receive the amount when tendered to him by the ryot, with the object of harassing the ryot and putting him to expense. Accordingly it had been suggested to add a provision that on proof of tender of payment the ryot should be entitled to recover all his costs.

He (Mr. Thompson) would not object if the amendment were limited to making the Zemindar repay to the ryot the amount of stamp duty required to make such deposit, and it would perhaps be desirable to adopt such a provision. The inclusion of all his costs would entail almost another suit in the enquiries which would have to be made and the objections which were sure to be urged as to the actual costs incurred. Some discussion would certainly arise on the question of stamps in the consideration of a subsequent section, and perhaps this Section had better be postponed until that Section had been disposed of.

The further consideration of the section was then postponed.

Sections 48 and 49 were agreed to.

Section 50 declared what proceeding should be taken on making a payment into Court, and drawing out the money.

MR. RIVERS THOMPSON said, this was another Section which had give rise to a great deal of objection. It was said that the stamp prescribed for making such deposits was prohibitory, and therefore the benefit of the provision was not so fully extended to the ryot as it should be. There seemed some difficulty in determining what the proper stamp should be. Practically, under the circular orders of the Board of Revenue the point had been settled by the case of the stamp prescribed by article 11 Schedule B of Act XXVI of 1867, which prescribed a duty of about ten per cent. on the amount of the deposit. Section 37 of Act X of 1859 had been repealed by Act X of 1862, and from that time, in all cases of arrears of rent the value prescribed for suits instituted in the Civil Courts, regulated the value of the stamp used in Act X proceedings. In all other applications the stamp was of the value of eight annas. Schedule B of Act X of 1862 had been repealed by Act XXVI of 1867, and under the ruling of the Board of Revenue before referred to, an almost prohibitory stamp duty was charged in the cases under this Section; so that, practically, a deposit of rent had to bear a stamp as if it was a suit, which was about ten per cent. on the amount deposited, a duty which was no doubt objectionable.

MR. SUTHERLAND said, when this matter was under discussion in Committee, he understood that the use of the word "application" placed these cases under the category of those applications or petitions which required an eight anna stamp; and he only now heard authoritatively for the first time that the stamp duty on these applications would amount

to a tax of about ten per cent. on the amount of rent deposited.

The HON'BLE ASHLEY EDEN said, the High Court ruling only referred to applications under one Section of Act X of 1859, but they did not make any rule as to other applications under the Act: they only laid down a Ruling that applications under that Section should bear a stamp of eight annas.

BABOO ISSUR CHUNDER GHOSAL said, the ruling of the High Court was on the word "application" as used in the section which brought about this discussion; and so long as that ruling existed, the word "application," as used in the present section, would of course bear the same interpretation.

The further consideration of the Section was then postponed.

Sections 51 to 57 were agreed to.

Section 58 related to the mode of executing decrees for the ejectment or re-instatement of ryots.

THE ADVOCATE-GENERAL moved the omission of the Section, on the ground that it appeared to be superfluous. The two preceding Sections, which referred to decrees for the delivery of pottahs and kubooleuts and for their execution by the Judge when the parties refused to execute, were correctly preserved, because under Act VIII of 1859 the power of the Court to execute a document which a defendant was decreed to execute, was limited to conveyance and negotiable instruments; but the 58th Section of this Bill provided for the execution of decrees for land under Sections 223 and 228 of Act VIII of 1859, and he (the Advocate-General) did not see why more difficulty should be experienced in the execution of decrees for the ejectment or re-instatement of a ryot, than in other decrees for possession. Under Sections 223 and 228 of Act VIII of 1839, in the case of decrees such as these, the decree would be for the recovery of the possession of land: the Court was required to remove the person in possession, and in case an order for possession was resisted, the Court might commit the offender to custody for thirty days, which seemed quite sufficient for all purposes. There seemed no proper reason for making a distinction in regard to any particular class of decrees.

MR. RIVERS THOMPSON said, the retention of the Section was rather with reference to the concluding words: "If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Court, shall give effect to the same;" and it was supposed that a more summary disposal of the matter would be effected by transferring the case to the Magistrate, than by proceeding under Act VIII of 1859, which opened a door for obstructions in execution of decrees. The facts were not clearly before the Committee, and he (Mr. Thompson) did not think there would be any objection to the omission of the Section.

The motion was then agreed to.

Section 59 was agreed to.

Section 60 provided that no execution should be issued after three years from the date of judgment.

BABOO PEARY CHAND MITTRA moved the omission of the Section, and the substitution of the following:—

"The provisions made in Section 282 of Act VIII of 1859 and Section 20 of Act XIV of 1859 shall regulate all proceedings in execution under this Act."

The Sections referred to were as follows. Section 282 of Act VIII of 1859 provided:—

"A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding Section; but his property shall continue liable, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than one hundred Rupees and on account of a transaction bearing date subsequently to the passing of this Act. When the decree shall be for a sum less than one hundred Rupees, and on account of a transaction bearing date as above, the Court may declare a defendant, who shall be discharged as aforesaid absolved from further liability under that decreee."

And Section 20 of Act XIV of 1859 enacted:—

"No process of execution shall issue from any Court not established by Royal Charter

to enforce any judgment, decree, or order, of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order to keep the same in force within three years next preceding the application for such execution."

Section 60 of this Bill was Section 92 of Act X. of 1859. He really did not see the object with which the Section was enacted. This Section clearly made a distinction between rent debts, and debts of all other kinds, and was not at all analogous to the two Sections which he had read. Under Section 38 of this Bill it was laid down that the proceedings under the Act were to be regulated by the provisions of the Code of Civil Procedure; but the Section before the Council was not in accordance with the Code of Civil Procedure. And besides, the working of this provision of Act X of 1859 had been very injurious, more especially to the Zemindar class. As regards planters, he believed they were not affected, because they deducted the amount of their decrees from the next advances made to their ryots. But the Zemindar certainly did suffer, because the ryot who fell into debt had only to absent himself for three years, making fraudulent transfers of his property, and thus prevent the Zemindar from recovering his just dues. He (Baboo Peary Chand Mittra) was told that applications for sale under section 9 of Regulation VIII of 1819 often amounted to less than Rs. 500, and therefore the hardship was the more felt. Considering that the Section under consideration was not in accordance with the two Sections to which he had referred, that the working had been found to be injurious, and that it only involved a question of procedure, and not a question of a substantive change in the law, he thought that the amendment which he had proposed could not fairly be objected to.

MR. RIVERS THOMPSON said, the practical object of the amendment was that the limitation we should put to cases under this Section should be regulated by Section 20 of Act XIV of 1859, which would give three years from the time when any "proceeding shall have been taken to enforce the judgment, decree, or order, or to keep the same in force." The object of the Section in the Bill was that no process whatever should be issued after three years; and it had generally been supposed that in cases for arrears of rent it was far preferable that decree-holders should be bound to put their decrees in execution without unnecessary delay, and not allow them to go beyond three years. He (Mr. Thompson) did not think it advisable that power should be given to extend that period. The decree was expressly limited by Act X of 1859 to three years' duration and Rs. 500 in amount, and he did not see what real ground there was for a change. If a proposition were made to reduce the maximum amount of decrees under this Section, he would have no objection to discuss the question; but he certainly objected to any extension of the time during which a decree might be enforced.

In regard to the application of Section 282 of Act VIII of 1859, he would remark that the provisions of that Section were not excepted from operation under this Bill, and they would still apply.

THE ADVOCATE-GENERAL said, that he agreed with the Hon'ble mover of the amendment that this Section did adopt a different rule from that enacted in Section 20 of Act XIV of 1859; and that was his (the Advocate-General's) reason for supporting the Section as it stood. He thought he was speaking according to practical experience, when he said that a frequent practice in all Civil suits in the Mofussil was this that at or about the time when the decree was made, the defendant made a *benamee* disposal of his property. Of course, he would not be so foolish as to do that after the decree was passed, for it would then be of no effect, and therefore we need not be afraid of transactions of this kind taking place within three years from the date of judgment. As a decree carried 12 per cent. interest from the date of judgment, there were persons who seemed to regard it as a safe and desirable

Baboo Peary Chand Mittra.

mode of investment. The decreeholder waited until just three years from the date of the decree were elapsing; he then attached some property of the judgment-debtor to recover the interest that had accrued due; and then the decree-holder again lay by until further interest had accrued, and so on. He himself had known cases which had come before the Courts, where the creditor had been a little too over-reaching, and just went beyond the three years, and cases in which interest had been accruing for more than twenty years, portions of property having been sold from time to time to keep up the decree. He would therefore support the Section.

BABOO ISSUR CHUNDER GHOSAL said, it was thought that this Section would keep a check on planters and Zemindars, and prevent their oppressing their ryots by holding decrees *in terrorem* over their heads; and for that reason it was enacted that decrees should not be allowed to be revived after three years, as in the case of other decrees. But whether the object with which the Legislature enacted the Section was successful or not was another question. He thought the rule now was that the planters and Zemindars generally reduced their decrees into bonds, and consequently, as far as they were concerned, they were perfectly safe. It was those who dealt quite honestly who suffered. It would be an anomaly if this Section were retained in the Bill, and if all rent cases were transferred to the Civil Courts, we should be guided by the procedure of Act VIII of 1859, which was quite opposed to the principle of this Section.

As to the argument stated by the learned Advocate-General that a decree was considered a safe and profitable investment, he (Baboo Issur Chunder Ghosal) would observe that the ordinary rate of interest in the market was 18 and sometimes even 24 per cent; he therefore did not see any advantage to be derived by holding a decree in hand which could not bring more than 12 per cent. simple interest. The facts appeared to him quite strange; one party making his whole property *benamee* merely for the pleasure of paying 12 per cent. interest on his debt for ever, and the other, instead of realising the money due to him and investing it on higher interest, continued to play into the hands of his debtor. Certainly, he (Baboo Issur Chunder Ghosal) could not help saying that both parties seemed to him as simple as they were inexperienced.

MR. SUTHERLAND said, that throughout the discussions on this Bill he had spoken and voted with a view to lessen litigation; and in conformity with this, in regard to Section 60, he thought there should be a limit of some sort. He was at a loss, however, to reconcile the arguments tacitly accepted by the Council, with regard to the omission of Section 50, with those now advanced in favor of a procedure differing from that of Act VIII of 1859. But letting that pass, he thought that if the compromise suggested by the Hon'ble mover of the Bill of reducing the amount of these decrees, should be entertained by the Council, it would be the best way of settling the question.

THE HON'BLE ASHLEY EDEN asked whether it would not cause great confusion to alter the law of limitation that had governed these decrees for the last ten years. It seemed to him that to alter it now arbitrarily would cause great confusion and hardship. No doubt the reason why this limitation was provided was, as stated by a previous speaker, in consequence of a recommendation of the Indigo Commission, that measures might be adopted to prevent decrees being held *in terrorem* over ryots for the purpose of making them enter into engagements in succeeding seasons. The question was whether, if that limitation was now without any particular reason altered, it would not give rise to some hardship.

MR. MONEY said, it had been stated in the course of this discussion that the operation of the three years' limit must create hardship. In the parts of the Non-Regulation Provinces where he had had experience, decrees were executed in infinitely less time, and the operation

of that practice had not been attended with hardship. It was insisted there that in all decrees under fifty rupees execution should be taken out then and there, and the same principle was laid down two years ago in extending Act VIII of 1859 to that part of the country. He would, therefore, oppose the motion.

The Council then divided :—

AYES 3.	NOES 10.
Baboo Issur Chunder Ghosaul.	Baboo Chunder Mohun Chatterjee.
Koomar Sutyanund Ghosaul.	Mr. Sutherland.
Baboo Peary Chand Mittra.	„ Alcock.
	„ Knowles.
	„ Thompson.
	„ Money.
	„ Dampier.
	The Hon'ble Ashley Eden.
	The Advocate-General
	The President.

The motion was therefore negatived.

MR. SUTHERLAND then moved the substitution of "two hundred Rupees" for "five hundred Rupees."

THE PRESIDENT said, in this matter he was inclined to take the view of the Honble member on his left (Mr. Money) that it was inadvisable to make any alteration in the existing law. It seemed to him that in altering the law of limitation in these matters, it could hardly be said that we were not altering the substantive provisions of the law, which all agreed was not to be done except on some very strong grounds indeed.

MR. RIVERS THOMPSON said, that he had heard nothing in favor of the amendment as to why the minimum amount of decrees, to which the special limitation of three years applied, should be reduced from five hundred to two hundred rupees. He thought therefore the arguments on the other side must prevail, and the law as it stood must remain in force.

The motion was then negatived, and the Section passed as it stood.

Sections 61 and 62 were agreed to.

Section 63 provided that under-tenures should not be sold while other execution was in force.

MR. DAMPIER said, that he wished to know where the last words of the Section were taken from: "but not against the person of such debtor." Those words were not in the corresponding Section of Act X of 1859.

MR. RIVERS THOMPSON said, that he thought the words were within the spirit of Section 17 of Act VI of 1862, that process should not be issued both against the person and property of a debtor.

MR. DAMPIER said, that the provisions of section 17 of Act VI of 1862 were that process both against the person and property should not be issued *simultaneously*. Unless therefore the Hon'ble mover of the Bill wished the consideration of the Section to be postponed, he (Mr. Dampier) must move the omission of the words "but not against the person of such debtor."

The consideration of the Section was then postponed.

MR. RIVERS THOMPSON said, that he should propose at another meeting an amendment with reference to Section 109 of Act X of 1859, which provided that in case of a decree where there was no saleable tenure, execution could only proceed against the person or moveable property of the judgment-debtor, and no immoveable property of the debtor could be touched unless the judgment could not otherwise be satisfied. That Section of Act X of 1859 had been left out of this Bill; but he (Mr. Thompson) thought it should stand before Section 61: he would at the same time take the opportunity of referring to the question of the words in the present Section which had been objected to.

Sections 64 and 65 were agreed to.

Section 66 related to the execution of decrees given in favour of sharers in undivided estates or tenures.

THE ADVOCATE-GENERAL said, this Section followed the words of Section 16 of Act VIII of 1865 of this Council. He was not on the Select Committee on that Bill, nor was he a member of the Council when that Act was passed. He would suggest whether there should not be an alteration in the Section at lines 15 and 16 with regard to the cancelment of *bona fide* engagements. As the Section stood, the effect of a sale, under a de-

cree, of an under-tenure would be to cancel engagements of the "late incumbent," who would be the person against whom the decree was made. Therefore, the purchaser would not be able to cancel any *bona fide* engagements which the person against whom the decree was made had entered into, but would be able to cancel the engagements of some previous holder. The words in the former part of the Section were "incumbrances which may have accrued by any act of any holder of the under-tenure." He (the Advocate-General) could not help thinking that there had been an error in Section 16 of Act VIII of 1865, and if it was thought that he was not trespassing on the general principle of not altering the substantive law, he would move to substitute for the words "late incumbent" the words "any holder."

After some conversation the consideration of the Section was postponed.

Section 67 was agreed to.

Section 68 declared that the produce of the land was held to be hypothecated for the rent.

THE ADVOCATE-GENERAL said, with reference to the discussions which had taken place as to what was the best mode of dealing with Section 29 of the Bill, which provided that no sub-letting by any cultivating tenant shall have any force or effect nor be recognised by any Court unless and until the person immediately entitled to receive the rent from such cultivating tenant shall have, in some writing signed by him, signified his consent to such sub-letting, it would be remembered that that Section was omitted, and the Hon'ble member opposite (Mr. Money) referred to the effect of sub-letting on the right of distraint, and he (the Advocate-General) pointed out that he thought that the real difficulty arose on the words "any cultivator" and "the actual cultivator" used in this Section 68 of the Bill; because the actual cultivator was the person who actually received the produce of the land, and therefore in the case of an actual cultivator sub-letting, according to the terms of this Section as it stood, the right of distraint would be gone. The right of distraint was only in respect of arrears of rent due from the person actually cultivating. He (the Advocate-General) would, therefore, move the addition to the Section of the following words:—

"Provided further, that any cultivator of land who sub-lets shall, notwithstanding such sub-letting, continue to be regarded as the actual cultivator within the meaning of this Section, unless the person immediately entitled to receipt of rent from him shall, by writing under his hand, have consented to such sub-letting."

That meant that if he did sub-let without the consent of his immediately superior landlord, the person who took from him would know that he took subject to his produce being distrained for arrears. Therefore, he would either ascertain that all arrears had been paid up, or he would ascertain that the consent of the landlord had been given. The landlord who did not give his consent, would then have a right to say "notwithstanding the sub-letting, the person who sub-let to you is the actual cultivator whose crops are hypothecated for the rent due."

MR. MONEY said, that it had appeared to him at first that the difficulty turned upon the word "cultivating tenant," and he confessed that he was unable to see that the wording now proposed would get rid of the difficulty. It seemed to him that the same difficulty existed which he pointed out before. At the time of the distress, or when a suit came on, the cultivator of the land, according to the wording of the amendment, would not be the man who cultivated but the man who had sub-let; therefore, it would be necessary to go back and see what his status was at the time of sub-letting, and whether he was then the cultivator of the land. As he (Mr. Money) understood it, the object was that zemindars should not be deprived of their right of distraint. But even that would not always follow from the amendment before the Council. Take the case of a widow who should sublet. She was really the ryot, but

she had not been the cultivator of the land for a number of years; the zemindar would, therefore, lose his right of distraint. If a man sub-let, would it be necessary to show that in that very year he had been cultivating? He might have been sub-letting that year and cultivating the previous year. It appeared to him (Mr. Money) that the words "cultivator of the land" would lead to a great deal of difficulty. The word "ryot" required definition, and great difficulty had been experienced from the want of such definition: greater difficulty would be experienced if the word "cultivator" was used in any sense other than that of the man cultivating at time of distraint. It seemed to him that the word "cultivator" was only applicable to the man then and there cultivating. Though he allowed that the man who was entitled to rent should not be deprived of the right of distraint by any fraudulent sub-letting on the part of the ryot, he should prefer to see the remedy left to the Zemindar in the form he (Mr. Money) proposed to leave it before. The amendment he had proposed said:—

"No sub-letting by any tenant shall debar the zemindar or the zemindar's representative from whom such tenant holds from the exercise of the right of distraint when the lease, under which the tenant holds, contains a provision that the tenant shall not sub-let, or when the tenant holds without a written lease."

In the present form the change was rather open to being a change of the substantive law. In Section 112 of Act X of 1859 it was enacted that when an arrear was due from any cultivator, the Zemindar, farmer, or other person entitled to receive rent immediately from such cultivator, might distrain; but under this amendment the distrainer would be, not the person immediately entitled to receive rent, but the person who was entitled to receive rent from the sub-lessor, and so far that appeared to be a change in the substantive law. He should prefer to leave the Zemindar the power of taking from the ryot the power of sub-letting. If the amendment before the Council were carried, it appeared to him (Mr. Money) that it would be desirable to put in a provision to protect sub-lessees, because if the crops of the sub-lessee be distrained, he should be entitled to deduct the value of the crop distrained from the rent he paid to the sub-lessor.

MR. RIVERS THOMPSON said, in all their discussions, the Select Committee had had a difficulty in dealing with the words "ryot," "tenant," and "under-tenant;" but in this case the amendment specially provided that for the purposes of this Section "cultivator of land" shall mean, in the case of sub-letting, the person by whom the land is sub-let. The words "cultivator of the land" occurred in the Section itself, and the words were here repeated, so that he did not see why any difficulty should arise in the interpretation of the meaning of this section. In the case which had been put of the widow, he thought it would be to the interest of the Zemindar that she should sub-let, but in such a case the person succeeding her husband would be bound by the terms of the lease given to her husband. In all other cases where the lease had been given to the actual cultivator, the proposed addition to the section would sufficiently secure the Zemindar's right to distrain, though the land might not at the time be found actually in the possession of the tenant to whom he had given the lease.

THE ADVOCATE-GENERAL said, what had fallen from the Hon'ble member opposite (Mr. Money) as to the amendment before the Council being an alteration of the law, would apply equally to Section 29 as it stood in the Bill, and to the Section which the Hon'ble member himself proposed to substitute for it, because it was quite certain that under Section 112 of Act X of 1859 the right of distraint would, in the case of a ryot sub-letting, only apply to the rent which the ryot would receive from the sub-lessee. Of course, that might be an answer to the amendment which he (the Advocate-General) proposed, but it would be equally an answer to the retention of the present Section, and to the Hon'ble member's proposed Section.

If, however, that was not to be treated as a valid objection to our dealing with the case of sub-letting, then, as the law stood, arrears of rent for which distraint might issue must be arrears due from the cultivator of the land, and the person from whom the lessor of the sub-lease held would not be able to exercise the right of distraint. If we wore agreed that it was desirable to prevent the application of the right of distraint being diverted in that manner, the only way was to provide that the person from whom arrears of rent were due was to be held to be the cultivator of land, whether he placed the cultivation in the hands of a third party or not.

With reference to the suggestion as to allowing the actual cultivator to recoup himself from the rent which he paid, he (the Advocate-General) thought it was a question worthy of consideration.

MR. MONEY said, that the learned Advocate-General had stated that the amendment which he (Mr. Money) had proposed was open to the same objection as he had taken to the amendment before the Council. He would allow that to a certain point, but he thought there was a difference between saying that the Zemindar when he gave a lease might debar the ryot from sub-letting, and saying that no cultivator should sub-let without the consent of the Zemindar. The former merely said that the Zemindar might reserve his right of distraint: the latter that the right of sub-letting could not be exercised without the consent of the landlord. The words of this amendment were that if the ryot sub-let without consent, the sub-letting should have no effect at all as to the Zemindar's right of distraint. It seemed to him (Mr. Money) that there was a great difference between the two.

THE HON'BLE ASHLEY EDEN said, that in the amendment which had been proposed by the previous speaker, it was assumed that every tenant held a lease, and the whole question turned on the conditions of that lease; but he believed that the cases in which vritten leases were actually given were very rare.

The motion was then put and agreed to, and the Section as amended was passed.

THE ADVOCATE-GENERAL said, he thought it would require further consideration as to what should be the proper mode in which the person whose crops were distrained, but who had paid his rent, should be recouped. If it were limited to his right to deduct the amount of the proceeds of the distress from the rent which he actually had to pay, he (the Advocate-General) thought that might be done at once. But in very many cases the value of the proceeds of the distress might in no way amount to the damages sustained from the default of the lessor. He should be prepared with an amendment to meet this at the next meeting of the Council.

Sections 69 to 77 were then agreed to.

Section 78 related to the application for sale of distrained crops.

MR. RIVERS THOMPSON explained that under Act X of 1859 an application for sale might be made to the Civil Court Ameen, but it seemed desirable, to give better security, that the application should be made directly to the Court: such a course might entail some slight delays, but, on the whole, he thought it was better than leaving the matter in the hands of an individual in the position of an Ameen.

The Section was then agreed to, and so also were Sections 70 to 90.

The further consideration of the Bill was then postponed.

The Council adjourned to Saturday, the 22nd instant.

Saturday, 22nd May, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.,
A. Money, Esq., C. B.,
A. R. Thompson Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland Esq.,
Koomar Satyanund Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

CALCUTTA PORT-DUES.

MR. DAMPIER moved for leave to bring in a Bill to amend Act XXX of 1857 (for the levy of port-dues and fees in the Port of Calcutta). In doing so, he said that in a word the object of the Bill was to raise the maximum limit which was now imposed by law on the rate of port-dues leviable on the shipping which visited Calcutta. The maximum was now four annas a ton, and the object of the Bill was to enable the Government, if after full enquiry such a measure should be found unavoidable and necessary, to levy a port-due up to a maximum of eight annas. The Government was fully aware of the general costliness of the Port of Calcutta; it was also fully sensible of its deficiencies in appliances as compared with other ports; and therefore he might assure the Council that nothing but a pressing and urgent necessity would have induced the Lieutenant-Governor to ask for authority to raise the dues of the port. That such a necessity existed he would now endeavor to show.

Before the year 1855 the whole charges on account of the conservancy of the port—lighting, buoying, surveying, and so on—were charged against the general revenues, and, on the other hand, the sums realised for the hire of buoys and for the services of the port officials were credited to the general revenues. The accounts of the port were first kept separate in consequence of the passing of Act XXII. of 1855, of which the 42nd Section ran thus:—

"The Local Government may, from time to time, vary the rate at which port-dues and fees shall be levied in any such port, river, or channel in such manner as, having regard to the receipts and charges on account of that port, it may deem expedient, by reducing or raising the dues and fees, or any of them; provided that the rates shall not in any case exceed the amount authorised to be taken by this or any subsequent Act."

It was evidently the object of that Section to relieve the general revenues from all charges on account of the different ports, and in accordance with the spirit of that Section a Port Fund Account for the Port of Calcutta was opened from the beginning of 1856-57. But for the first seven or eight years the accounts were most irregularly kept, and were very unsatisfactory. Charges not properly debitable to the port were charged against it, and charges which were debitable against the port were charged against the general revenues. For instance, the whole of the stock which had been supplied at the cost of the general revenues, the cost of the Master Attendant's Establishment, and so on, were never charged to the Port Account. And this continued till 1863 from which time the matter was looked up. The accounts were, from the beginning of 1864-65, placed in the hands of the Master Attendant, and a Committee of Enquiry, consisting of Mr. Harrison, the present Comptroller-General of Accounts, and Captain Howe, the then Deputy Master Attendant, was appointed to look thoroughly into the affairs of the Port Fund from the date of its creation, and to report what its actual position was, after properly adjusting all items which had been erroneously credited and debited. The Committee found that on the 1st of May, 1864, the books showed the sum of Rupees 4,97,000 to the credit of the Port Fund, with outstanding dues amounting to Rupees 60,000. But they observed that from the manner in which the accounts had been kept, it was impossible to accept

that as in any way representing the true position of the Port Fund on the 1st May 1864; and that it was utterly impracticable to find out with exactitude what the real position of the Port Fund then was. In their report the Committee suggested a compromise between the Government and the Port Fund, and made several proposals which were adopted in most points by the Government of India; but in one material point the action of the Government of India was far more liberal to the Fund than the Committee's proposals. The Government made over, without any charge whatever to the Fund, the block which had been supplied out of the general revenues, and which was then estimated to be worth Rupees 7,81,000. The compromise effected was in this wise. The whole of the block, as has been said, was presented free of charge by the Government to the Port Fund, in the same way as the Government had three years before made over the anchor moorings which were in 1864 valued at Rupees 8,00,000. In satisfaction of all claims against the Fund up to date the Government, including the value of the stock (which, as has been said, was then estimated at Rupees 7,81,000) took over Rupees 4,00,000 out of the Rupees 4,97,000 which the books showed as standing at the credit of the Fund on 1st May 1864. There could be no doubt whatever that this arrangement was most liberal to the Port Fund, and that if the accounts had been strictly adjusted the Fund would have had to pay very much more than these four lakhs.

So from the 1st May 1864 the Fund began business with a cash balance of Rupees 97,000, outstanding dues amounting to Rupees 60,000, and stock estimated at Rupees 7,81, 000, making a total capital of Rupees 9,38,000.

From that time a stock account was first opened with the object of not burdening the revenue of each year with the entire cost of any new works, such as ships, buoys, &c, which might happen to be executed during that year, but the benefit of which was to extend over many years. With the object of spreading such charges over several years the stock account was opened, against which these charges are in the first instance debited; a proper proportion of them being charged off to revenue year by year in order to represent the wear and tear of the year. The rate of per-centage to be so charged off to revenue each year for each kind of stock was fixed by the Committee with reference to the estimated durability of that kind of stock.

The general conclusion at which the Committee then arrived was that matters being thus adjusted, it would be possible for the fund with strict economy to meet out of its annual income the charges for carrying on works and keeping up establishments exactly on the scale on which things were then being done, but that there would be nothing whatever to spare for improvements or future increase of expenses.

After the adjustment of 1st May 1864, the charges against income in each year's accounts have fallen under four general heads:—

(1) Establishments; (2) current expenses for maintenance and ordinary repairs to stock, and for stores; (3) charges on account of depreciation from the wear and tear of stock; and (4) interest at five per cent on any debt contracted by borrowing money from the Government of India in the manner provided by Section 44 of Act XXII of 1855. These were the annual charges which, the Committee hoped, would be met out of the income of the Fund.

Unfortunately, however, the anticipations of the Committee were very soon proved to be over sanguine. Six months after the Fund was thus started with a capital of Rupees 9,38,000 in hand and in block, the Cyclone of October 1864 took place. The immediate consequence was an extraordinarily heavy outlay for current repairs, for raising of boats sunk, and other similar works chargeable to revenue; and also a very heavy charge against stock to

replace boats, buoys, tidal semaphores, and so on, which were destroyed, or altogether lost. And it was not only for one year that this extraordinary expenditure lasted, though it was calculated that the Cyclone added Rupees 3,00,000 to the expenditure of the first year which followed it, 1865-66. The damages done could not be made up in one year; consequently the expenditure for renovations went on for the entire period of three years which intervened between the Cyclone of October 1864 and that of November 1867, and then the whole thing began again.

And thus it had happened that after the Fund was set on its legs, from the very first year there had been a steady deficit and a steady increase in debt to the Government of India, of which he (Mr. Dampier) would read the figures. He would first read the figures of the income of each year, so that the Council might be able to follow its fluctuations. In 1864-65, the receipts from all sources of income were Rupees 5,77,000; in 1865-66, Rupees 6,64,000; in 1866-67, Rupees 7,22,000; and in 1867-68, (which was a financial year of only eleven months) the income was Rupees 6,77,000. He (Mr. Dampier) had been able to obtain an approximate estimate of the income of 1868-69, which was Rupees 6,40,000. He had forgotten to mention that another effect of these Cyclones, besides increasing the expenditure, was to reduce the sources of income by destroying appliances which earned money; for instance, whilst the buoys were adrift, and until those which had been lost could be replaced by new buoys, much mooring hire was lost.

The annual charges under the four heads which he had mentioned, *viz.*, (1) establishments; (2) expenses for current repairs and maintenance of stock; (3) charges for depreciation of stock; and (4) interest on borrowed money ran thus:—In 1864-65, Rupees 8,63,000; in 1865-66, Rupees 8,43,000; in 1866-67 (eleven months only) Rupees 8,71,000; and in 1867-68, Rupees 9,95,000. The deficits in these years were therefore Rupees 2,85,000, 1,79,000 1,49,000, 3,17,000, respectively. He might mention at once that the enormous increase in charges and consequently increased deficit of 1867-68, was, in a great measure, caused by the item of interest, because year by year the port had been borrowing from the General Treasury for building ships, boats, and other purposes, and as the debt was increased so was the annual interest, at the rate of five per-cent., which was chargeable against the income of the years. The debt of the port in those several years stood as follows: at the end of 1864-65 Rupees 5,30,000; of 1865-66, Rupees 9,42,000; of 1867-68, Rupees 17,81,000; and at the end of 1867-68, it stood as high as Rupees 23,49,000. He (Mr. Dampier) had not got the actual figures for the past year, but from what information he had been able to obtain, he calculated that the debt stood certainly not below Rupees 26,00,000 on the 1st of April last.

It might be interesting to the Council to hear how the collections on account of port-dues stood during these years. In 1863-64, 1,433 vessels visited the port, having an aggregate tonnage of 10,18,459, and paying Rs. 2,34,794 as port-dues; in 1865-66, 1,169 ships, 8,45,211 tons, Rs. 1,98,310; in 1866-67 (eleven months) 950 ships, 7,03,461 tons, Rs. 1,67,888; in 1867-68, 1,011 ships, 7,87,319 tons, Rs. 1,90,973; in 1868-69, 1,086 ships, 8,25,309 tons, and Rs. 1,98,371. The average of the port-dues levied in the five years was about Rs. 1,98,000.

The causes of the annual deficits were very concisely put in his last report by Captain Howe, paragraphs 21 and 22:—

"The principal causes which have led to this loss and to the accumulation of so large a debt have been recognised by the Government of India. Within the short space of three years two cyclones occurred, which both proved destructive to a large amount of property belonging to the fund, and unfortunately to a great loss of life. The first of these two cyclones occurring after a period of twelve years, from the date of a previous cyclone, led to the conclusion that so disastrous an oc-

occurrence should be regarded as an exceptional event, and that the loss sustained thereby might be borne by dividing the outlay it involved over a certain number of years; but within three years a second cyclone took place, proving almost as destructive as the first, and led to another large increase of expenditure.

How the money advanced from the general treasury has been spent, has been shown in the annual reports, previously submitted; but to mention some of the principal items, it may be stated that the loss of the old anchor moorings occasioned by the cyclone of October 1864, led to the appointment of a Committee for the consideration of the best means to be adopted for the prevention of such losses in future. This Committee recommended the substitution of patent screws for anchors, and in carrying out this recommendation, and in relaying anchor moorings where screws were not available, the large sum of eleven lakhs of Rupees has been spent. Each of the two cyclones referred to caused the total loss of a Floating Light Vessel, the aggregate value of which amounted to Rs. 2,25,000. The report of an engineer appointed to enquire into the best method of removing the dangerous shoals in the channels of the Hooghly led the Goverument to order the construction of a Steam Dredge, which vessel was built on the Clyde, and sent out to Calcutta, the cost amounting to Rs. 2,45,000. More recently the necessity of having a Steam Fire Engine Boat, fitted with all the modern improvements, and commensurate with the wants of a port like Calcutta, led to the purchase of such a vessel at a cost of Rs. 85,000. These are the principal works of construction which have been met from the funds borrowed from the general treasury; there have been other charges for building new anchor vessels and boats in lieu of those lost, but sufficient has been shown to indicate how the money has been spent."

Here Captain Howe had accounted for above 16½ lakhs out of a debt of 23 lakhs. He (Mr. Dampier) did not think that the Council would be prepared to say that any one of those items of expenditure was one which the Government was not called on to incur by the requirements of the times. Such charges as the surveying of the channels of the Hooghly and the provision of a Fire Engine must commend themselves to all. Nor was this expenditure yet at an end, for he found that three Light Vessels were now being constructed; and much expense was still to be incurred in laying down screw moorings. This year the dock-yard charges would amount to Rs, 5,00,000 at least, and the debt would, as he had calculated, stand, on the 30th of April last, at least at 26 lakhs of rupees.

Such being the position of the fund, the question was, what prospect was there of its extricating itself? Out of the four classes of charges which fell against the annual revenue, however ingeniously the item of set-off for depreciation of stock might be dealt with financially, in making up the account, and however leniently the creditor might deal with the port in not enforcing payment of his interest which now amounted to Rs. 1,30,000, the two first classes of charges, *viz.*, establishments and cost of maintenance and current repairs, stock and stores, must be met by cash payments. Captain Howe had estimated the charges for 1868-69 on these two accounts, the absolute working charges of the fund, at Rs. 6,55,000, and this he (Mr. Dampier) would take as the average expense of a year. In the memorandum which had been furnished to him, the income of the year which had just closed, 1868-69, was, as he had said, approximately estimated at Rs. 6,40,000. He would, however, for the present purpose, take Rs. 6,56,000 that being the average of the last five years. According to this estimate a surplus of Rs. 1,000 only might be expected after defraying the actual working charges of each year, without allowing any charge for depreciation of stock. He need scarcely point out that any arrangement of accounts which does not provide for depreciation of stock was unsound, and therefore to put the fund in a sound financial condition, the income must be made to cover this depreciation of stock, which last year amounted to Rs. 1,67,000. As the stock increased the depreciation charge would increase. Two lakhs might be assumed as the charge on this account annually, and the interest on the debt of Rs. 26,00,000 amounted to Rs 1,30,000. The estimated annual income, therefore, fell short of the charges which were properly debitable

against each year by about Rs. 3,30,000. The only prospective increase of income was from the development of trade. He did not suppose the most sanguine well-wisher of the port could possibly hope, that within any reasonable number of years the development of trade would suffice to equalise the income and expenditure.

This state of things had been brought to the notice of the Government of India; and it had been pointed out that it would be out of the question for the port to provide funds to pay this large debt. As Captain Howe observed, if the Government of India was pleased to make the utter inability of the fund to repay the debt a condition of its remission, there was no doubt that the condition was very completely fulfilled. But the Government of India had made certain other conditions; it insisted on an arrangement being made to put the income and expenditure of future years on an equilibrium.

The Resolution of 31st July 1868 contained the following passage:—

"It is impossible, in the opinion of the Government of India, to continue longer the practice whereby the port obtains such advances from the Government as may be required from time to time, thereby contracting an accumulative debt, without any distinct financial understanding being arrived at."

And the ultimatum which had led to the introduction of the present Bill was the Resolution of the 28th April 1869, which ran as follows:—

"The Governor-General in Council is unable to remit any portion of the debt due to Government by the Calcutta Port Fund until the Government of Bengal puts the finances of the fund on a sound footing by raising the port-dues from 4 to 8 annas per ton, and by effecting some sensible reduction of expenditure. When that is done, the Governor-General in Council will be prepared to remit debt to the extent of the deficits of the four years ended 31st March 1868, *i. e.*, nine lakhs. If after another year a further reduction of expenditure or an increase of income be effected, four lakhs more of the debt will be cancelled, making altogether 13 lakhs, which is half the present debt of 26 lakhs. But it is to be distinctly understood that debt can be remitted only as a means of ensuring solvency, and not otherwise."

Now, as to reduction he (Mr. Dampier) could assure the Council that the Executive Government would do all in its power to effect that. He could not, however, say that the result of what he had seen of the subject in preparing for the introduction of this measure, led him to any sanguine hope that considerable reduction could be made. The matter would, however, be thoroughly enquired into and every thing possible would be done. Then, if the Council would be pleased to give to the Executive Government the power now sought of raising the port-dues to a maximum of eight annas per ton, the Government of Bengal would certainly not avail itself of that power by levying the maximum due if it were found posssible by any slighter increase to meet the requirements of the time and to balance income and expenditure.

A Bill of the same nature as that which he had the honor now to propose was introduced into this Council in 1862, but it was withdrawn because, while the Select Committee was sitting, the accounts of another year were given in, and those accounts showed a surplus. But he had already endeavored to show that the accounts as they were prepared before 1864 were perfectly valueless. If the accounts laid before that Committee had been properly and completely drawn up, there was not the slightest doubt that they would not have shown the "considerable surplus" which induced the Council to withdraw the Bill. He (Mr. Dampier) had said that the Government was fully aware of the costliness of the port, and he proposed to lay before the Council certain papers comparing the general expenses of this port with those of Liverpool. But the Bill now in hand dealt only with dues which were meant to cover the cost of lighting, surveying, and buoying the channels, and he must read a passage of the report of Captain Howe regarding those dues:—

"There is one difference indeed which is this; if the vessel enters port in ballast in

Calcutta, a reduction of one-fourth the port-due is made, no such reduction being made in Liverpool: but with this exception we find that the charge is the same at Calcutta with four Light Vessels and two Light Houses, with 140 miles of Pilot's water to be buoyed off with 120 buoys, as at Liverpool where there are four Light Vessels, one Light House, and pilotage channels of 78 miles buoyed with 58 buoys. It must also be borne in mind that the cost of maintaining a light in the Hooghly is certainly more than double the cost of maintaining a similar light in the Mersey; that the majority of buoys used here are larger and more expensive than those in use at home, and that every fathom of chain must be imported from England, the freight adding largely to its cost. Add to these considerations the fact that owing to the length and the changeable nature of the navigable channels leading to the port, the establishment for surveying and buoying these channels, is necessarily much larger than any such establishment employed at Liverpool, and the conclusion seems to be that if 6 pence per ton is fairly fixed as the light and buoy duty payable at Liverpool, it is not possible that 4 annas per ton can be an adequate sum for Calcutta."

A conclusion in which, as it stood, he (Mr. Dampier) thought every Hon'ble member must concur. On this ground then, and on the general ground of the bankruptcy of the Port Fund, he asked the leave of the Council to introduce this Bill.

The motion was agreed to.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

Sections 91 to 95 were agreed to.

Section 96 provided that any person whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer.

MR. DAMPIER asked why Section 142 of Act X of 1859 was omitted: that Section gave power to a person claiming the property attached for arrears of rent to intervene.

MR. RIVERS THOMPSON said, that Section 77 of Act X of 1859, which was a similar Section to Section 142 and which provided for the appearance of intervenors, had been omitted on account of Act VIII of 1859 sufficiently providing for the bringing in of third parties. It would be quite in the discretion of the Court under the provisions of the Civil Procedure Code to secure the attendance of third parties having an interest in the suit where such a course was necessary.

MR. DAMPIER said that there was another change in the Section to which he thought the attention of the Council should be drawn. Here the suit which a third party might institute was a suit to try the right to *possession* of the property, but in the corresponding Section of Act X of 1859 the suit was to try the perfect proprietary right. He had no doubt the change was very desirable, but it was right that the attention of the Council should be drawn to it.

THE ADVOCATE-GENERAL said that the question was simply this. The action of replevin was sometimes brought in England to try the right to the property, but the real question in these suits turned on the possession of the property—whether the claimant was or was not in possession of the property in respect of whose arrears distraint was made, irrespective of any further question as to the title to the property.

The Section was then agreed to.

Sections 97 and 98 were agreed to.

Section 99 provided the punishment for unlawful distraint.

MR. RIVERS THOMPSON said, this Section differed from the corresponding Section of Act X of 1859. In Section 143 of Act X of 1859 the person distraining unlawfully was held to have committed criminal trespass, the punishment for which under the Penal Code was only imprisonment for three months; and perhaps the Committee had gone beyond what was proper in making the offender liable to six months' imprisonment. He thought it would be better that instead of six months, the imprisonment should

be limited to three months, which was the extent of imprisonment under Act X of 1859.

THE ADVOCATE-GENERAL said that he thought that it was not simply a question of excess of punishment, because what was here made subject to imprisonment and fine would not at all necessarily be criminal trespass under the Penal Code. Criminal trespass involved the entering on property in possession of another with the intent to commit an offence or to intimidate, insult, or annoy the person in possession. It would be seen that the mere entering on the property was not the gist of the offence, and where a person not properly authorised to distrain, might attempt to distrain, without intent to intimidate or annoy the person in possession, which would be a necessary ingredient in the offence of criminal trespass. A person, for instance, might without any intent to commit an offence, have acted in the absence of any written authority. Therefore he (the Advocate General did not at all think that this was a question in regard to which we should be dealing with the offence of criminal trespass as defined in the Penal Code; but he conceived that the objection to the last five lines of this Section went beyond what the Hon'ble Member had pointed out that double the extent of imprisonment might be imposed in cases of improper entry, which would not include the criminal intent contemplated by the Code, so that even if the amount of imprisonment were reduced to three months, still we should be imposing as high a penalty as could be imposed under the Penal Code for the offence of criminal trespass. In the Code it was thought sufficient to punish with three months' imprisonment the entering on property in the possession of another, with intent to commit an offence or to intimidate, insult or annoy such person. He (the Advocate-General) should conceive that even three months' imprisonment, to say nothing of fine, would be improper and in the nature of excessive punishment for what really might in many cases amount to no more than a person entering on property in the possession of another to make an unlawful distraint, without any intent to commit an offence or intimidate or annoy the person in possession of the property. Therefore he thought that the better way would be to reduce the term of imprisonment as well as the amount of fine. The Council would understand that in any case where the exercise of the assumed power was done with the intent to intimidate or annoy, the offence would fall under the Penal Code. But what ought to be provided for beyond what the Code provides would be for cases in which there were no circumstances from which the intent could be inferred. Still there might be many cases in which it would be proper to provide a lesser penalty to prevent the illegal or irregular exercise of the right of distraint. There might be a large class of cases in which the intent contemplated in the Penal Code could not be legally or fully proved, though, nevertheless, there might be no doubt of its existence. Therefore, he thought the maximum fine might be fixed at three hundred rupees, and the imprisonment at two months, and he would also make it quite clear that this Section should not in any way interfere with an offence committed against the provisions of the Penal Code. He (the Advocate-General) would therefore move that the last clause of the Section be omitted and the following words substituted for it :—

"The said person shall, when the act complained of does not amount to criminal trespass, be liable to fine which may extend to Rs. 300 or to imprisonment simple or rigorous which may extend to two months, or to both, in addition to any damages which may be awarded against him in such suit."

The motion was agreed to, and the Section as amended was passed.

Sections 100 to 105 were agreed to.

The consideration of Sections 106 and 107 was postponed.

In Section 111 the short title of the Act was, on the motion of the Advocate-General, altered from "The Landlord and Tenant Act, 1869," to "The

Landlord and Tenant Procedure Act, 1869."

MR. RIVERS THOMPSON said, he would now bring to the notice of the Council the omission from the Bill of Section 149 of Act X of 1859, relating to the employment of mookhtears and revenue agents. It would have been observed that a great number of the annexures to this Bill contained memorials from persons who had been hitherto practising in the Revenue Courts in the conduct and pleading of suits under Act X of 1859, and this class generally had protested against the provision of this Bill, which excluded them from practising in the Civil Courts, to which this kind of cases would now be transferred. He might at once state that it was quite in the wish of the Select Committee, if it had been in their power, to make a provision by which mookhtears and Revenue agents should continue to appear, practise, and plead in these suits before the Civil Courts. But having reference to Act XX of 1865, the Pleaders' and Mookhtears' Act, it seemed beyond the power of this Council to make any provision to continue to the mookhtears of the Revenue Courts the privileges which they now enjoyed. It would be seen from the 8th and following Sections of that law that the High Court had the power to give certificates to mookhtears on their paying certain fees and passing the prescribed examinations, on the strength of which they could act to a certain extent even in Civil Courts. But by the 11th Section of that Act, pleaders were authorised to appear, plead, and act in any Criminal Court, or before any Revenue authority, and mookhtears were empowered, subject to the conditions of their certificates, to practise, appear, and act in any Civil Court, and to appear, *plead*, and act in any Criminal Court. The words of the Section seemed to declare that a mookhtear might appear and conduct cases in the Civil Courts, but when it came to the actual pleading, it was beyond his competency to do so, and before they could *plead*, that law must be changed. It would, he (Mr. Thompson) thought, be very desirable that a large class of persons who had hitherto practised in Act X cases should be allowed to conduct and plead in such suits in the Civil Courts, because otherwise one effect of this Bill would be to increase the expense that would be incurred in the employment of the agency necessary to conduct these cases.

BABOO PEARY CHAND MITTRA said, that it was true that the mookhtears were not so respectable a body as the pleaders, yet he thought their respectability was daily increasing, and that they were an intelligent and useful class. If mookhtears were no longer allowed to plead, one great benefit which the cultivating class now had would be denied to them, for few of them could afford to engage the services of a pleader. If the ryot had the assistance of a mookhtear, his case would be ably pleaded and his rights protected: the mookhtear, moreover, was in many cases an inhabitant of the village with a local knowledge of the matters in dispute, which the pleaders could not have, and they therefore possessed a sort of special training. He thought also that the question of stamps should be considered, and all that is possible should be done to cheapen the expense of litigation under this Bill.

MR. RIVERS THOMPSON then moved the introduction of the following Section after Section 43, to provide the procedure which the Collector should employ in conducting enquiries under Sections 42 and 43. The absence of a procedure was brought to notice at a former Meeting, but no provision could be made till the Council had decided whether the particular enquiries under Section 42 were to be made over to Collectors or not. This proposal had now been adopted by the Council, and he would therefore move the introduction of the following Section in this place:

"The provisions of the said Act VIII of 1859 and the Acts amending the same, or of any other Act or Acts for the time being in force in Civil Courts in Bengal, relating to the evidence of witnesses, to procuring the

attendance of witnesses, and the production of documents, and to the examination, remuneration, and punishment of witnesses, shall apply to all proceedings before any Collector under Section XLII; and for the purposes aforesaid, the Collector shall have all the powers and authorities in and by such Acts or any of them conferred upon the Court."

The Section was agreed to.

On the motion of Mr. Thompson, verbal amendments were then made in Section 63.

Mr. RIVERS THOMPSON said that the Select Committee had omitted from the Bill a Section relating to execution of money-decrees, which upon fuller consideration he thought perhaps should not be omitted. He referred to Section 109 of Act X. Under that Section, as a general rule, execution on account of a money-decree, not being money due as arrears of rent of a saleable tenure, was not to be had against immoveable property until attachment of the judgment-debtor's moveable property had first been made. He thought it desirable to maintain the distinction which the policy of the rent laws recommended, and he would therefore suggest the introduction of the following Section after Section 65:—

"In the execution of any decree for the payment of any money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor."

THE ADVOCATE-GENERAL said that he thought the consideration of this proposed amendment should stand over, for this reason. The Hon'ble Member seemed to consider that there was a particular policy pointed out in Act X of 1859, with regard to making a distinction in the order of procedure in decrees for money due for arrears of rent of a saleable under-tenure. But it was a question whether, if that distinction was a distinction of policy, there should be any difference made between a money-decree and decrees of that kind. Subject to what the Hon'ble member might say on the subject, it was not apparent to him (the Advocate-General) why that distinction should be made. He did not himself at present see the reason of the distinction.

MR. RIVERS THOMPSON said, that if the provision which he proposed to introduce was omitted, under the procedure of Act VIII of 1859 the judgment-creditor might proceed against immoveable property for a money debt. That had been against the policy and procedure of the revenue law of 1859: and if it was desirable to retain that procedure of the Revenue Courts some such distinction must be continued. If that policy was not desirable and the procedure of Act VIII of 1859 were adopted, this Section might simply be omitted.

The further consideration of the proposed Section was then postponed.

The Council was adjourned to Saturday, the 29th instant.

Saturday 29th May, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal. *Presiding.*

T. H. Cowie, Esq., *Advocate-General.*	T. Alcock, Esq.
The Hon'ble Ashley Eden.	H. H. Sutherland, Esq
H. L. Dampier, Esq.	Koomar Sutyanund Ghosaul.
A. Money, Esq., C. B.	Baboo Issur Chunder Ghosaul, and
A. R. Thompson, Esq.	Baboo Chunder Mohun Chatterjee.
H. Knowles, Esq.	
Baboo Peary Chand Mittra.	

CALCUTTA PORT-DUES.

MR. DAMPIER moved that the Bill to amend Act XXX of 1857 (to provide for the levy of Port-dues and fees in the Port of Calcutta) be read in Council. He said he had already explained so

fully the object with which the Bill was introduced, that he had little to add on this occasion. Since the last meeting a communication had been received from the Chamber of Commerce on which his Honor the Lieutenant-Governor had agreed to the appointment of a mixed Commission to look into the accounts of the Port Fund. The idea of the Chamber was that certain items were charged to the Port Fund which were not properly chargeable to it, but the Lieutenant-Governor would direct the attention of the Committee not only to that point, but also to an investigation as to whether any items of expenditure were capable of reduction. This Committee would be making their enquiries while the present Bill was under the consideration of a Select Committee.

He would mention one other point which he had omitted to notice. It had been suggested that the Pilotage Fund should be amalgamated with the Calcutta Port Fund. That suggestion originated with Captain Howe, but as Honorable Members would see from the papers before the Council, the Port Fund would gain very little by that being done. Certain changes in the Pilot Service were going on, of which the result would be in some years that there would be a profit from the Pilotage fees. At present, however, many members of the old service engaged on certain terms remained on the establishment, and until they retired or died out the Pilotage fees would not show a profit. At present the Pilotage entailed a loss of about Rs 40,000 a year. Nothing, therefore, would at present be gained by the incorporation of the Pilotage Fund with the Port Fund.

MR. SUTHERLAND said, he was not prepared to offer any opposition to the first reading of the Bill; and he certainly did not desire to do so, as he looked upon its introduction in Council as the first step to a full investigation of the Port Fund accounts, and a final and satisfactory adjustment of the question. He had not been able to look into the papers which he had received yesterday, but he had seen previously in the Gazette a statement of the accounts of the Port Fund. He was sorry to say, however, that he could make very little of that statement, and from one or two communications which he had received from Merchants more directly interested in shipping matters than he was, it seemed that they had experienced the same difficulty in understanding those accounts. With the permission of the Council he would read an extract from a letter from a member of a firm largely engaged in the agency of shipping. He said :—

"I think that, to say the least of it, no necessity for doubling the Port-dues has been established : it seems to me that on the papers before me it is impossible to ascertain how the Port Fund account actually stands, or what measures it may be necessary or expedient to adopt in order to put it into a satisfactory position. Nothing short of a detailed and accurate statement of the receipts and expenditure of the account from the date of its establishment to the present time, will, in my opinion, be sufficient to furnish the required information. *** Indeed, it seems to me that without the opportunity which would thus be afforded for ascertaining the REAL position, any legislation must be based on extremely imperfect data, must consequently be premature, and ought to be resisted."

He (Mr. Sutherland) was glad to learn from the Honble Member who had just sat down that an outside Commission was to be appointed to investigate the position of the Port Fund, and he had no doubt all the necessary papers would be laid before that Commission.

Turning to the accounts, there were one or two items regarding which remarks had been made out of doors. The cost of maintainance of "The Agitator" was considered excessive, and persons who knew the river had said that for dredging purposes she was practically useless; that, however, was no matter for this Council, but for the Executive Government to determine.

As regards the large debt, 26 lakhs, owing to the Government of India, he would still venture to hope that Government would reconsider its decision in the matter and fall in with the proposition of His Honor made in the official letter of 1st February last, and

remit the *whole* amount. He thought this would be no more than fair and reasonable. It did seem hard to burden the annual revenue of the Fund with the large exceptional outlay on Block that had arisen in consequence of the two Cyclones within the last 5 years. He thought the Government should be expected to keep up the Block, looking to the yearly revenue for its interest on the same; but instead of this, the Block in the first instance, the full cost of maintainance and establishment, together with interest on the Block, were all expected to come out of the receipts of the Fund.

It was impossible that the mercantile marine could bear the whole of these charges.

He (Mr. Sutherland) thought that if the Fund started clear and all the items of charge were put on an intelligible and fairly allotted system, 4 annas per ton would cover the outlay and leave at all events *something* for tear and wear. This matter of adjustment of the accounts was all important, as without a thorough revision of the charges the remission of the full debt would not put the Fund on a sound basis.

The Hon'ble mover had referred to the Pilotage Fund, on which he (Mr. Sutherland) was not previously aware there was a loss; but he thought that in any case, loss or profit, the Pilotage Fund should bear a portion of the expense incurred for buoys and light vessels. Those two items together came to something little short of Rs. 300,000. And he would venture to go still further, and say that in his humble opinion the Supreme Government should bear a share of these charges, as it was quite as much a political as a commercial necessity to keep up a clear communication between Calcutta and the Sea.

He now came to the strongest argument for endeavouring to right matters by every possible means before we doubled the Port-dues. He meant the already enormous expense of Calcutta as a port. This had been in some measure recognised, but not, he feared, to the full extent.

Mr. Sutherland.

Captain Howe had instituted a comparison between this Port and Liverpool that he (Mr. Sutherland) could not regard as conclusive on all points. Captain Howe had taken no notice of the cost to the ship of landing and shipping cargo, a charge averaging 6 annas per ton, and taking a 1200 ton vessel carrying 18,00 tons burden inwards and outwards, or 3,600 tons in all, the gross charge on this account would be Rs. 1350, the exact equivalent of the sum put down for Liverpool dock expenses.

It was beyond question that Calcutta was one of the most expensive ports in the world. He (Mr. Sutherland) was informed that a shipowner would be satisfied if he got his ship clear out of Calcutta at 17*s.* 6*d.* to 20*s.* a ton, say £1,200 for a 1,200 ton ship, and this was altogether exclusive of agency commission. These charges, he believed, had in numberless instances led owners and masters to avoid Calcutta: he had more than one assurance to the effect that these charges, coupled with the dangers of the river and the consequent higher premium of insurance, had had the effect of reducing the tonnage visiting the port, and any further imposts would undoubtedly add to the present feeling against Calcutta.

Now in regard to this he (Mr. Sutherland) thought that we should have reason to deplore any steps in this direction on broader grounds than a mere additional burden on a particular class: he thought that the general commerce and revenue of the country would suffer if the trade of the port were curtailed, and he hoped and confidently believed that the result of this Commission, which His Honor had been pleased to agree to appoint, would be that if they had the opportunity, as no doubt they would have, of going thoroughly into all the items of charge and allotting a fair share of the charges to the Supreme Government and the Pilotage Fund, this Bill would be found to be unnecessary.

MR. MONEY said that a consideration of the figures given to the Council

last Saturday, with the accounts and papers since supplied, had led him to a different conclusion from that which had been arrived at by the Hon'ble Member who spoke last. He found from the figures given in the speech of the Hon'ble mover of the Bill, that in 1863-64, 1433 vessels of a tonnage of 10,18,000 had entered the Port of Calcutta; in 1865-66 there were 1,169 vessels with a tonnage of 8,45,000; in 1866-67, 950 vessels with a tonnage of 7,03,000; in 1867-68, 1,011 vessels with a tonnage of 7,87,000; and in 1868-69, 1,086 vessels with a tonnage of 8,25,000. These figures showed, he thought, conclusively that from 1863 to 1869 the commerce of Calcutta had been decreasing, that is to say, that at this moment there was a falling commerce rather than a rising one. It was at this time and under such circumstances that this Council had been asked to place an additional tax on trade by the imposition of higher duties in a port which was already one of the most expensive ports in the world. It might also be anticipated that when the Railway between Nagpore and Jubbulpore shall have been completed, thus opening out a new and easy route from Bombay to the Central Provinces, a portion of the commerce that now came to Calcutta would, in consequence of the facility of importation to Central India, be transferred to Bombay; so that there seemed no great likelihood of an increase in the Port-dues of Calcutta from the extension of the commerce of the Port. If, however, it was necessary to impose additional difficulties to those which already existed, the risk and danger of so doing must be faced. We were bound to direct our attention first to the necessity of the measure now before the Council, and then to the consideration as to whether the remedy proposed was adequate. He thought the Council should be exceedingly careful to see that in trying to meet the difficulties of the present state of things—the bankrupt state of the Port-Fund—the measure proposed was a complete and full one, and not a half measure.

He had some difficulty in understanding some of the accounts submitted, partly because of the want of detail and partly because the papers supplied had come too late for very careful examination. But there were one or two points on which he should like to have some explanation. He found that the Hon'ble mover had said that the annual charges were under four heads:—

"(1) Establishments; (2) current expenses for maintenance of and ordinary repairs to stock, (3) charges on account of depreciation of stock; and (4) interest on money borrowed from Government."

And in the details it was stated that the charges in 1867-68 were 9,95,000. In turning to the statement in paper No. 4, he (Mr. Money) found the expenditure put down at 9,95,223, but he failed to see under any head of such expenditure any item for depreciation of stock. In paragraph 23 of Captain Howe's memorandum, which referred to the statement, he found the item of depreciation of stock put down at Rs. 1,75,000. Again, he found in that statement of account an item of interest, which was put down at Rs. 39,538. The Hon'ble mover of the Bill had stated that the debt of the Port in the last few years stood thus: at the end of 1864-65 Rs. 5,30,000, of 1865-66 Rs. 9,42,000, and of 1866-67 Rs. 17,81,000. That was to say, that at the beginning of the year to which this statement referred, the debt due was Rs. 17,81,000. Interest on that sum was not Rs. 39,538, but Rs. 89,000; therefore we were out here by an item of about Rs. 50,000, and out not to the good but to the bad. It was possible that this discrepancy might be capable of explanation. But taking the figures generally, as given by the Hon'ble mover of the Bill, he thought it must be admitted that the Port Fund as at present constituted did not afford a sufficient income to meet the necessary expenses, and that, therefore, some-

thing must be done to supplement that income.

He now came to the adequacy of the measure proposed. He found that the average tonnage of the shipping during the last three years was 7,72,000 tons. It was proposed to raise the Port-dues from 4 annas to 8 annas per ton, which would on that tonnage give only Rs. 1,93,000 more than at present. The Hon'ble mover had told us that the upshot of the accounts was that now the income and current expenditure exactly balanced each other, and that there was not more than Rs. 1,000 difference either way. That was without any charge for depreciation of stock, which the Hon'ble member had put down at Rs. 1,95,000 or 2 lakhs. He had also pointed out that it was necessary to provide for the item of interest, or Rs. 1,30,000 which would make a total of Rs. 3,30,000. But we were, according to the measure before the Council, providing only for a sum of Rs. 1,93,000; we were therefore short by Rs. 1,37,000 Against this might be credited the interest on the 13 lakhs which the Government had conditionally promised to wipe off. That would reduce the interest to Rs. 65,000. We would still, however, have to meet a charge of 2 lakhs for depreciation of stock and Rs. 65,000 for interest, while by this Bill we should only gain Rs. 1,93,000. Of course there might be some possible reduction in the expenditure, but from the remarks which fell from the Hon'ble mover at the last meeting, we had no right to anticipate any great reduction. There might also be certain charges which ought not to be debited to the Port, and there might be, perhaps, some new sources of income. He thought there was one item which ought to be brought to the credit of the Port. At present commerce was saddled with all the expenses of buoying and lighting, but ships of commerce were not the only ships that came into the Port. There were ships of Her Majesty, and ships of the Government which ought to pay their quota of such charges. He (Mr. Money) failed to see why a certain portion of that expenditure should not be borne by the Government, but he saw no reason to suppose that the deficit could thus be made up, even with the assistance of this Bill. We must remember also that the Government of India had distinctly laid down that they would not reduce the debt unless the fund were put in a condition in which the income and expenditure should be brought to an equilibrium. He could not see how the Bill in its present form would do this. It appeared to him that viewing the very large expenditure now entailed on the fund by the necessary charge for depreciation of stock and other expenses, if the figures before the Council were correct, and the items of expenditure as shown were not susceptible of very great reduction, there were only two logical and practicable ways of getting out of the present difficulty. One would be that in connection with this Bill the Government should recognize cyclones as visitations of Providence, like famines, all charges incidental to them being considered as charges to be borne by the general revenues; and the other was by altering the rate of Port-due proposed in this Bill from 8 annas to 12 annas.

MR. DAMPIER said that he thought it would scarcely be necessary for him to say that however able and forcible many of the arguments that had been brought forward were, it was impossible for him to attempt to answer them in this place. He could not have dealt with such questions as whether the cost of the "Agitator" was excessive, and whether the vessel was necessary or not for dredging the channels, and whether the Government of India ought to recognize a cyclone as a general calamity like a famine, and, therefore, meet the cost of repairing the damages caused thereby, out of the general revenues. He had no doubt that such arguments would be advanced and would receive full consideration when laid before the proper authorities through the proper and legitimate channels. There were, however, one or

two points of objection in the remarks made by Hon'ble members which he should try to meet.

The Hon'ble member on his left (Mr. Money) had observed that although he (Mr. Dampier) had made it appear in his remarks at the last meeting that depreciation of block was included in the accounts for 1866-67, in fact those accounts as published in the Gazette did not contain any such item : this was a misapprehension. He held in his hand a memorandum which showed that under each item in the account depreciation calculated at the rates settled by the Committee of 1864 was included. For instance the charges of the "Agitator" were entered in the printed account as Rs. 1,21,000; this sum was made up of Rs. 25,000 for establishment, Rs. 85,000 for repairs and stores, and Rs. 11,000 for depreciation. And the other items in the printed account were made up in the same way; so that out of the whole expenditure of the year no less than Rs. 1,61,000 was on account of set-off for depreciation for the different items of block.

Another point to which the Hon'ble Member had taken exception was that in the accounts of 1867-68, the interest on the debt was entered at Rs. 39,000, although the debt at the beginning of that year stood at Rs. 17,00,000, on which the interest would be nearer Rs 89,000 than Rs. 39,000. The explanation of this was that in fact the accounts of 1867-68 did not contain any charge whatever for interest on the debt as it stood at the beginning of that year, for up to the end of 1867-68, no demand had been made on behalf of the General Treasury on the Master Attendant as manager of the Port Fund for payment of the interest which had accrued due during that year.

The item of Rs. 39,000 which appeared as interest in the accounts of 1867-68 was the interest for the year 1866-67, calculated on the debt as it stood at the beginning of that year. So that if the interest for 1867-68 on the debt of 17 lakhs had been charged in the account of that year, the position of the fund would have been worse by many thousands of rupees than it was shown to be in the printed accounts.

There was one more remark of the Hon'ble Member requiring notice. He appeared to think that even after the Council had been induced to pass a law enabling the Government to raise the Port-dues to eight annas, it would be open to the Government of India, the creditor, to say that the measure was insufficient to place the income and expenditure on an equilibrium, and to refuse to cancel the entire debt. The whole tenor and meaning of the Resolution of the Government of India seemed to him (Mr. Dampier) to be—"if you will do your best, and really meet the ordinary current expenses, and charges out of your income, we will wipe off this debt." It appeared to him that that was the principle which that Resolution meant to lay down—that the Government of India, would wipe off all that had been advanced for extraordinary charges from the general revenues, if the Government of Bengal will put the fund in a state to meet the ordinary expenditure.

He (Mr. Dampier) thought that the other points which had been raised would be better discussed in Committee.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of Mr. Money, Mr. Sutherland, Mr. Knowles, Baboo Peary Chand Mittra, and the mover.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The postponed Section 6 was agreed to.

The postpond Section 8 having been read—

BABOO ISSUR CHUNDER GHOSAL said that he had made some ob-

servations on this Section at a former meeting of the Council, which, after some discussion, led to the postponement of the consideration of the Section with reference to Section 26. He would, therefore, suggest that this Section should be considered after the ejectment Sections had been disposed of.

The consideration of the Section was then postponed.

The postponed Section 27 was then agreed to.

THE ADVOCATE-GENERAL moved the substitution of the following Section for Section 39:—

"XXXIX—The cause of action in suits brought for the delivery of any pottah or kubooleut, or for the cancelment of any lease, for the determination of rates of rent, for illegal exactions of rent, cess, or impost, for refusal of receipts for rent paid, for extortion of rent, for excessive demand of rent, for abatement of rent, for arrears of rent, and for refusing to register transfers, successions or divisions under Section XXVII, shall be brought in the Court which would have had jurisdiction to entertain a suit for the recovery of the land or other immoveable property in relation to which the cause of action arose, and in no other Court."

The motion was agreed to.

The postponed Section 41 having been read—

MR. RIVERS THOMPSON said that as the Penal Code under Section 188 provided quite sufficiently for the punishment of disobedience to lawful orders, duly promalgated by a public servant he would move the omission of the last five lines of the Section, which were as follows:—

"And any person who after the issue of such order shall wilfully and knowingly obstruct the making of such measurement, shall be liable to fine which may extend to five hundred Rupees."

The motion was agreed to, and the Section as amended passed.

BABOO ISSUR CHUNDER GHOSAL moved the introduction of the following Sections after Section 43:—

A. "If any Zemindar, or other person in receipt of the rent of land, require assistance to eject any cultivator not having a right of occupancy; or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy; or any agent, after the determination of his agency; or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector or other person exercising the full powers of a Collector of a District wherein the land in dispute may be situate; and such Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated *ticca-zari-peshgi*, or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance, either in money or by the usufruct of the land. In all such cases the parties must proceed by regular suit."

B. "Orders made under the preceding Section shall be executed in the like manner as decrees under this Act, save that the same shall be carried out by the Collector or other person as aforesaid, and not by the Civil Court."

C. "No order made in any such enquiry shall be appealable, but any party to any such proceeding may petition the Collector or other person as aforesaid for a review of such order within a month from the date thereof, and the provisions of the said Act VIII of 1859 and of any Act or Acts altering or amending the same in relation to applications for review of judgment, shall apply to such applications and all proceedings thereunder."

D. "Any party to such proceeding may, within one year from the date of any such order, whether the same shall or shall not have been made on review, institute a regular suit to set aside such order."

MR. MONEY said that the amendment before the Council was supposed to be a recognition of the principle of Section 25 of Act X of 1859. He found however that there was one difference of great importance. Under the proposed amendment the application was to be made to the Collector as under Act X of 1859; but while under that Act an appeal lay to the Commissioner of Revenue, the proposed Sections gave no appeal whatever, but said that the party dissatisfied might apply for a review of judgment, and if he did not obtain what he wished he might institute a suit in the Civil Court within one year from the date of the decree. The amendment took away the appeal, which could now be made by an application to the Commissioner on a one rupee stamp paper, and in its

stead referred the ryot to the Civil Court to institute a regular suit; that is, the ryot, after having been ejected from his land, after having it put out of his power to borrow money—for having lost his land he had no security to offer—was referred to that which he could not do as the only form of relief open to him. This appeared to be a very important change and one for the worse. Throughout the whole of these discussions, he (Mr. Money) did not think there had been any disposition on the part of the Council to improve the position of Zemindars as regards suits or applications under this head. There was a general wish not to take away anything the Zemindars had got, but no inclination to give them anything more. This amendment obviously did improve their position.

As regards the principle of the matter, he found that from the beginning of legislation in regard to suits between Zemindars and ryots, the Zemindars have had preference and favor shown to them in some form or other. This preference and consideration had been shown by the legislature on every occasion when they legislated on this subject, till the passing of Act X of 1859, or rather till the passing of Act XXVI of 1860. By Regulation XXXV of 1795, Section 12, preference was given to all claims for arrears of rent. By Regulation 35 of 1795, Sections 10 and following, the Zemindars right to get defaulters summarily arrested was recognized. In Regulation VII of 1799, Section 15, Clause 7, the Zemindar's right to turn out of his own accord *all* ryots and tenants for arrears of rent is acknowledged, and in Regulation VIII of 1819, Section 18, Clause 4, the Zemindar's right to cancel of his own authority any tenure on which an arrear was adjudged. Then came Act X of 1859, the framers of which thought it necessary to make some alteration in the law as regards certain classes of ryots. By Section 21 of that law it was enacted—

"When an arrear of rent remains due from any ryot at the end of the Bengal year, or the end of the month of Jeth of the Fusly, or Willayuttee year as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due. Provided that no ryot having a right of occupancy or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act."

It followed then that other ryots not falling under these provisions could be ejected for arrears by Zemindars without any interference from the Courts; and that this was the meaning of the framers of Act X of 1859, was abundantly clear from Section 25 of that Act, which provided that if any Zemindar *required assistance to eject, &c.* These words, "assistance to eject," evidently supposed the existence of an anterior right to eject. Then came Act XIV of 1859, and that Act apparently took away from the Zemindar the right which he possessed of ousting a tenant *suo motu*, for Section 15 of that Act provided that any person not ousted by due course of law should be replaced in possession without any question as to his right to such possession. Then Section 25 of Act X of 1859 became the means of avoiding the operation of that provision of Act XIV of 1859, and he (Mr. Money) believed that was the chief reason why so much stress had been laid by Zemindars on the retention of that Section.

Three or four propositions had now been before the Council. One was to let the matter stay in the hands of the Collector as at present. Another was to make no provision at all like the special form of relief given by Section 25 of Act X of 1859, but to leave the Zemindar to prefer his claim by a regular suit in the Civil Court. Another was to allow the Zemindar to go to the Civil Court on an application similar to that now preferred to Collectors, and a fourth proposition had also been discussed, *viz.*, to make a summary application to the Civil Court, and in case of any question arising between the Zemindar and the ryot, to have the case referred to a regular suit in that Court. His (Mr. Money's) objections to the present amendment were not only that by

taking away the power of appeal it put the Zemindar in a better position than he now possessed, and so far changed the law, but that it left the trial of these cases to the Collector. Now the very purpose for which we were sitting here and altering the law was to make over all such cases to the Civil Courts. There were many arguments in favor of the retention by the Collector of the decision of actions for arrears of rent; but the present appeared to him (Mr. Money) one of the class of cases which would be best decided by the Civil Courts. Questions of right and of title were involved, such as whether the ryot had the right of possession, and whether the lease had expired. If the Collector had to decide that kind of suits, he (Mr. Money) failed to see what the object of the Bill was. It appeared to him that the Civil Courts, from the peculiar training of the officers presiding in them, were best fitted for the trial and disposal of this kind of cases.

The amendment which was printed before this one, was that the application should be made to the Civil Court; but to that he should have the same objection, namely the non-granting of an appeal. But if to that amendment a clause had been added giving an appeal to the Judge on a cheap stamp, there would be less objection. There would, however, even then remain the objection that a second series of trials of the same point might be gone through by a regular suit in the Court. It had been suggested to him only yesterday as perhaps the best form of disposing of this much-vexed question, that if the suit could be brought before the Civil Court by an application instead of by a regular plaint, thereby getting rid of the difficulty of stamp duty, and if a cheap appeal, as at present, was allowed to the Judge of the District as now to the Commissioner, the appeal to the High Court after that being placed on the same footing as in a regular suit, the exigencies of the case would be met. In addition to that we might lay down that no regular suit should afterwards be entertained. The main objection, even at present, was that you had two classes of suits to decide the same question, first by what was called a summary procedure, and then by a regular suit on the very same point. He (Mr. Money) did not think this objection would hold so strongly when the second class of suits would be tried by the same officers who tried the first. At present it was practically an appeal from the Collector to the Moonsiff or Sudder Ameen. It would undoubtedly, however, be of advantage, if we could in any way get rid of the double suit. The procedure which he suggested would be that the application should be made to the Civil Court, and on the decision of such suit the appeal should lie to the Judge; the only difference from a regular suit being as to the amount of stamp duty; but after that the appeal to the High Court should be on the same stamp as in a regular suit: no other suit at all being allowed. That amendment, however, was not before the Council. As for the present amendment, it took away from the ryot the right of appeal, and only gave him relief through an expensive form of procedure at the very moment when by his ejection he was ruined. He (Mr. Money) should therefore vote against the amendment.

MR. SUTHERLAND said, there were a series of amendments in his name which he was willing to withdraw in favor of the amendment before the Council. He thought the general feeling of the Council, except the Hon'ble member who spoke last, and to whose experience he (Mr. Sutherland) would desire to defer, was in favor of the clauses before the Council. As we have already, in one instance, *viz.* in the procedure as to the measurement of lands, left the matter in the hands of the Collector, it did not look such an anomaly to leave this matter in the same hands. He (Mr. Sutherland) would however wish that each of the proposed clauses should be considered separately in detail. In the meantime, he would, with the permission of the Council, withdraw the amendments which stood in his name.

BABOO PEARY CHAND MITTRA said, he thought that there was a great deal of soundness in what had been urged, that there should be only one tribunal to which all applications under this Act should be made; but there was a difficulty which he did not know how they could get over. If such applications were to be made in a Civil Court, what procedure was to guide the Court in the disposal of such cases. He did not know if Act VIII of 1859 could well guide the Civil Court in disposing of these cases; it was, therefore, he believed that the hon'ble mover of the amendment had studiously avoided the Civil Court and substituted the Collector, but if a summary suit could be instituted in a Judicial Court, he (Baboo Peary Chand Mittra) was sure that no hon'ble member would contend for the retention of the Section which had been objected to.

MR. RIVERS THOMPSON said, he agreed with very much that had fallen from the hon'ble member opposite (Mr. Money). He concurred with him in the belief that there was nothing whatever in the class of suits that came under Section 25 of Act X of 1859, which justified recourse to any special or summary procedure, for their adjudication; and certainly they did not require it so much as other classes of suits now made over to the Civil Courts. He (Mr. Thompson) would go further and say that if the hon'ble member had on the last occasion made the speech which he had to-day made, the Council would probably not now be discussing the amendment under consideration. It was mainly through his advocacy that some kind of summary procedure was necessary, that the consideration of this question had been postponed so often. Notwithstanding all the discussion which had taken place, he (Mr. Thompson) maintained the opinion that this class of cases did not require a summary procedure, and he was therefore prepared to vote against the retention of any such provisions. As regards the matter now before the Council, there were three forms in which such provision might be made; one that there should be two suits before the Civil Courts, first a summary proceeding and afterwards that the case might be re-tried in a regular way, but this course was unreasonable in itself and was generally condemned. Then there had been a proposal for a suit before the Collector, open to review, but not to appeal, and re-triable by the Civil Court; but there were serious objections, which the Hon'ble Member had explained, to this procedure; and again, there was a proposal that the suit might be tried in some summary way by the Civil Court and appealable to the Judge, but that there should be no regular suit. For his own part he was inclined to think that this class of cases should be tried by the Civil Court in the same manner as any other suit under the Act, and by this course it would be once for all properly disposed of. Upon the amendment before the Council he thought the principle of having any summary procedure at all should first be decided.

THE ADVOCATE-GENERAL said that he should also ask the President to put the Sections to the vote in consecutive order, as he thought that the Council should first deal with the principle contained in Section A. by itself. He concurred with the hon'ble member who spoke last; like him he confessed that he had not yet heard any reason (save one which itself was a matter for consideration) why there should be any provision requiring that this class of suits should be tried by a different procedure from other suits under the Act. The only reason that had been given was that if a regular suit were to be brought in all cases of ejectment, the party bringing the suit would be subject to the ordinary stamp duty. But was it right to enable parties to evade the stamp law by calling what really was a suit not a suit but a proceeding in the nature of a suit. That seemed a periphrasis and had no meaning whatever; and beyond the objection as to stamps, which this was not the right way to get over, he had not yet heard any distinction or difference to be made: whether the investigation were carried out by the Court or by the Collector,

was a question subsequently to be determined. First we should consider whether Section A. should be introduced, and subsequently any amendment as to the form of proceeding might be proposed. His objection was not now to the form of the Section, but simply as to whether there should be any distinction made between the trial of this class of cases and any other suit under the Act.

BABOO ISSUR CHUNDER GHOSAL said that he was unwilling to take up the time of the Council by a repetition of the arguments which he had more than once brought before them—why in certain cases landholders should still be allowed to retain the right of summary ejectment of their tenants and farmers. It was the revenue system of the country that demanded such a course of things, for unless the landholders were armed with such authority, they would be powerless to collect the Government dues in proper time to save their estates from the Collector's hammer. That was the reason why such an exceptional law had become necessary for the very existence of the landholding class, and if any one was to be blamed for such a state of things it was the Government who had made their Revenue Sale Laws so strict. He would assure the Council that the question of stamp fees which had been brought before them by some of the Hon'ble Members in connection with this question, was of less weight with the landholders, with whom the principal object was time and possession; and unless these two objects were secured to them, they were not prepared to accept any amendment which the Hon'ble Members in opposition could bring forward. In the very able exposition of the law on this head by the Hon'ble Member on his immediate right (Mr. Money,) the Council had heard how tender the former Governments were in their treatment of the landholders, and there was no reason why the present Government should treat them otherwise, except it could be proved that the landholders as a body have become faithless to their trust. He (Baboo Issur Chunder Ghosal) would, however, accept the remarks of the Hon'ble Member on that part of the amendment which substituted a review of judgment for an appeal to the Commissioner to be just, and was, therefore, willing to adopt the appeal instead of the proposed review. And as to the reason why he had proposed the cases to be adjudicated by the Collector instead of the Civil Court, it was that in the previous amendments brought forward by other Hon'ble Members, the Council could not settle them in a satisfactory manner, and it was therefore thought advisable to reproduce the old law. The stamp fee question was more for the interests of the ryots and farmers with whom the eventual costs of the suit would lie.

MR. DAMPIER said that he had, on a former occasion, declared that if it could be shown to him that under the existing law zemindars had any material advantage in point of cheapness or of promptness in ejecting their tenants—if Section 25 of Act X. of 1859 gave them any such advantage over the ordinary procedure—he would not vote for depriving them of that advantage. All that he had heard had shown him that the only advantage which the zemindars had enjoyed in this class of suits was the small value of the stamp on institution, and the right of immediate execution without waiting for formal application or the result of any appeal. He wished to continue these advantages to the landlord, but he was satisfied that they did not legitimately enjoy the advantage of having their right to oust decided by any summary or imperfect kind of investigation. If the practical effect of Section 25 of Act X. of 1859 had been to give them such an advantage, he (Mr. Dampier) was convinced that it was from a misunderstanding of the intention of that Section by those who administered it. He would entreat the Council not to throw out on the world a provision of law in such a form that it was calculated to have an effect which cannot attach to it except under a misconstruction of its terms. If the amendments now before the Council (by which

the hearing and adjudication of such applications for ejectment was left with Collectors) were adopted, he felt certain that, notwihstanding the clause enjoining on Collectors to treat the cases precisely as suits under this Act, the impression would be created that the Collector had something different to do than the Moonsiff would have had to do if the case had been instituted and tried before him. From the mere fact of the Legislature having made a special provision leaving these cases with the Collector, it would be concluded that some more summary and imperfect enquiry was intended. But to work the Sections in that way would be to work them wrongly and improperly, and to give an advantage to the zemindar which the law did not mean to give him. He (Mr. Dampier) did not understand the object of making the Collector work by the procedure of the Civil Courts in this solitary class of cases. Certainly, if the Collector had to do precisely what the Moonsiff would do, the Moonsiff might as well do it in the first instance. The real object of the amendment appeared to be to reduce the amount of stamp duty, for if the case were constituted as a suit before the Moonsiff the stamp would be higher. He (Mr. Dampier) believed (and here he wished to be understood that he was speaking for himself only) that the Executive Government would be willing, if the sense of the Council were so expressed, to lower the stamp duty on this particular class of suits by an executive order, and to keep it at what it had been hitherto, an application under Section 25 of Act X. of 1859. Under the Stamp law the Governor-General in Council had special power to make such exemptions and modifications in the stamp duties as he thought fit. Then if such a course as that were taken by the Executive Government, it would continue the first of their existing advantages to the landlords, and the suits might unobjectionably be instituted and tried as regular civil suits.

The next point would be not to take away the zemindars' second advantage which they now enjoyed, the power of obtaining immediate and certain execution of the decree in such cases. When a decree had been thus regularly obtained, the zemindar might, by the decretal order itself, be allowed the assistance of an officer of the Court to oust the tenant. There was one other point on which it was desirable to keep the position of the parties exactly as it was under Act X of 1859. Under that Act a cheap appeal on a one rupee stamp was allowed to the Commissioner against an order under Section 25, which was considered to be an executive order. In place of the appeal to the Commissioner from the summary order of the Collector, let the Judge hear the appeal from the decision of the Moonsiff; and let the stamp duty on such appeal be also fixed at one rupee by an order of the Executive Government, the zemindar meanwhile retaining possession of the land. Then all material advantages of the old procedure having been so retained in the new procedure, let all further appeals and so on be governed as to stamps and in all other respects by the rules of ordinary civil suits. By such a course all difficulties would be got over, and above all the eminent absurdity would be avoided which existed under the present Act, and which the present amendment and other amendments proposed to the Council would perpetuate; *viz.*, that the question of the right of ejectment should be first tried and decided by one Court under the rules provided for the trial of suits, on presentation of an application on an 8 annas stamp; and then that if either party chose within a year to institute a suit on payment of the *ad valorem* stamp duty, the very same question of right to eject should again be re-opened and again tried on exactly the same evidence and exactly the same procedure, by a Court of no higher jurisdiction or authority.

He (Mr. Dampier) thought he saw his way to such a procedure as he had sketched out, which would continue to the Zemindars precisely the same advantages which they now possessed, and which would not lay the Council open to the charge of throwing out Section 25 of Act X of 1859, and providing nothing in its stead. For these reasons, he hoped that the consideration of the

question might be postponed, to enable him to prepare the necessary amendment.

BABOO ISSUR CHUNDER GHOSAL expressed his willingness to withdraw the amendment contingent on the bringing forward of a scheme such as that which had been sketched out by the Hon'ble Members on his right, provided that the landlord was *not refused possession* till the result of the final appeal, which might, in some instances, take the case to England.

MR. MONEY said he understood that the amendment had been withdrawn contingent on the bringing forward of an amendment which was not before the Council, but with regard to which some favorable opinions had been expressed. It seemed to him that that amendment was also contingent on the sanction of the Government of India to the proposal with regard to stamps in this class of cases. He, therefore, thought that the consideration of this question should stand over till the next meeting of the Council, or till the consent of the Governor-General in Council had been ascertained.

BABOO ISSUR CHUNDER GHOSAL'S amendment was then by leave withdrawn.

The postponed Section 40 having been read—

BABOO PEARY CHAND MITTRA moved the addition of the words "and in proof of the tender of payment at the Mal Cutcherry, any under-tenant or ryot shall be entitled to receive the costs of deposit."

MR. RIVERS THOMPSON said that if this amendment had to be introduced at all, it should come after Section 50. Section 49 merely said that the under-tenant or ryot might, after tender of the full amount of rent due from him to the Zemindar, pay such amount into Court to the credit of the Zemindar. The proceedings on making such payment and drawing out the money were described at length in Section 50, and if any provision was to be made for the re-payment to the ryot of his costs, it should come properly under Section 50. But he (Mr. Thompson) was opposed altogether to the principle of the amendment. It was now clearly ascertained that the stamp on applications for deposit should bear a maximum of eight annas, and that the practice of charging stamp duty of about ten per cent. upon the amount of the deposit was erroneous, and would be discontinued under the orders of the Board of Revenue. The great difficulty with reference to stamps had therefore been got over. Then the question was whether, on tender being made and the Zemindar refusing to receive the amount tendered, and on the ryot depositing such amount in Court, he was entitled to be reimbursed his costs. Now, considering the relations which ought to exist between the tenant and the Zemindar, he was clearly of opinion that it should not be made to the interest of the ryot in every case to make the Moonsiff's Court a treasury for the receipt of his rents; and considering the fact of the stamp duty having been reduced to eight annas, he (Mr. Thompson) should oppose the amendment as not being at all justifiable under the circumstances of the case. The provision in the law as it stood had been enacted for a special emergency, and the adoption of the amendment would, he feared, have the effect of making the practice of paying rents through the Courts a general one. Such a course was to be deprecated.

The motion was by leave withdrawn, and the Section agreed to.

The postponed Section 50 was agreed to.

MR. RIVERS THOMPSON moved the introduction of the following new Section after Section 65:—

"In the execution of any decree for the payment of any money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor."

The motion was agreed to.

The postponed Section 66 was passed after verbal amendments.

THE ADVOCATE-GENERAL moved the introduction of the following Section after Section 101:—

"Whenever the property of any person is distrained for arrears of rent due from the person from whom he immediately holds the land, and the person whose property is so distrained, shall pay to the distrainer the amount of arrears and the expense of the distraint, he shall have the right to set off the amount so paid by him against any rent due or to accrue due from him to the person from whom he so immediately holds the land. The exercise of such right of set-off shall be without prejudice to the right to bring a suit for any damages which he may have sustained by reason of the default of such person."

He said that he thought that the question of certain damages or loss which might accrue to the actual cultivator through no default of his own must be left to the action of the Civil Courts, because it was impossible to lay down any rule as to loss in any particular cases.

MR. MONEY said he thought that the consideration of this amendment, which was a matter of some importance, should stand over till the next meeting.

The further consider of the section and of the Bill was then postponed.

The Council was adjourned to Saturday, the 5th June, 1869.

Saturday, 5th June, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Koomar Satyanund, Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL moved for leave to bring in a Bill to amend and consolidate the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein. In doing so he said, although, of course, on this occasion, it was not his intention to go at all into the particular details of the measure which it was proposed to lay before the Council for their consideration, still, having regard to the circumstance that the subject of coolie labor had on more than one occasion come before the Council and been the subject of legislation, and had also been very fully discussed in the Council in the year 1867, when a Bill was passed through all its stages though it did not eventually become law; and also having regard to the fact that with, he believed, the exception of the President and the two Hon'ble Members opposite (Mr. Eden and Mr. Dampier,) none of the present Members of the Council took part in any of the previous discussions; he (the Advocate-General) proposed to take up a short time by detailing in a general way what the course of legislative action on this subject had been, as he thought that would be the most convenient way of bringing before the Council the main points on which it was proposed by the present Bill to effect what it was hoped would be found to be improvements on the existing law. Probably most Hon'ble Members were aware that the subject of providing any protection for laborers or of the regulation of the terms on which, and the mode in which, laborers were recruited, for the first time came under the consideration of this Council in 1863. It was, he believed, the result of a special Commission which had issued to enquire into the existing system, or perhaps he ought rather to call it no system, that had prevailed to the end of 1862. That Commission, he thought, was appointed in July, 1862. Down to the time at which the subject was first taken in hand by the Bengal Government and this Council, laborers were recruited by contractors who were under no supervision whatever, who recruited laborers without any specific engagement, and who were under no liability as regards their proper

care, whether in respect of medical attendance or otherwise, either in transit from the Districts at which they were recruited, or at the depôt, or in transit from the depôt to the Districts and estates where they were ultimately to be employed, the contractor simply engaging to supply so many laborers at so much per head, and being paid for as many laborers as he landed at the estates alive.

That was the state of things till 1863, when a measure was introduced into this Council, and after considerable discussion was passed as Act III of 1863. He (the Advocate-General) would intimate very briefly what the main objects of that measure were. Superintendents of Labor Transport were established who had the power of licensing contractors, and without their license it was rendered illegal for any contractor to engage laborers for Assam, Cachar, and Sylhet; and in like manner licensed contractors employed recruiters similarly licensed by the Superintendents, who, for the future, were alone allowed to engage laborers. The Superintendents were also vested with the general powers of approving of such depôts as existed, and of such new ones as might hereafter be constructed, and of seeing that the requisite measures were taken for the accommodation and proper care of the laborers during the time they were at the depôt, and previous to their despatch to the Tea Districts. There was also given power to the Superintendents to send back to their homes, directly or indirectly at the expense of the contractor, such laborers as on arrival at the depôt should be found from sickness unfit to proceed further. He (the Advocate-General) mentioned that particularly, because he wanted to draw the attention of the Council as early as possible to this, that the object of the Government of Bengal and the object of the previous labors of this Council with regard to the subject of coolie labor and coolie emigration had principally been directed to ensuring as much as might be the arrival of laborers so selected and under such circumstances at the scene of their labors, as might on the one hand ensure the best possible chance of useful labor to their employers, and on the other hand prevent the evils which experience had shown too frequently resulted from the transportation of persons unfit from sickness or other cause for the employment for which they were required. With the same object the Act of 1863 also provided for the appointment of Medical Inspectors for the purpose of inspecting the depôts, and seeing what the state of the medical comforts was, and what the state of health of the laborers was at the time of their arrival at the depôt, and during the time they remained there.

Then with a somewhat different object—one which certainly, he thought, Hon'ble Members must agree it would be most desirable to secure, but with regard to which possibly it might be said that the success of the experiment had so far been doubtful; he meant the object of securing, at the very earliest possible period, a preventive against the system which had prevailed on the part of those engaging recruits, and which he (the Advocate-General) might call little less than the kidnapping of coolies, that was to say, enticing them, frequently on erroneous statements, to engage to serve in Districts about which they knew nothing, and without any intimation of what they were to do. The Act also contained a provision, under which every recruited coolie was to be taken before the nearest Magistrate, who was to satisfy himself that the coolie in a general way understood what he was about to engage for, the amount of work which he would have to perform, and the wages he was to receive. Not until this was accomplished was the Magistrate to register the name of the coolie; and until such registration was effected, the further removal of the coolie to the depôt was prohibited. There were also provisions under which recruiters and contractors were bound to supply sufficient food to laborers in transit, and a proper person to accompany them. Provision was also made for the punishment of the contractor in case of ill-treatment of coolies on

The Advocate-General.

the journey. For the first time also was introduced, after considerable discussion, in the Act of 1863, a provision relating to the maximum term for which it should be lawful to engage laborers for hire in the Tea Districts, and the maximum term fixed by that Act was five years. Also for the first time provisions were made which, he believed to a great extent, though perhaps not so far as could be desired, expressly prohibited any but licensed steamers or boats conveying coolies to the place of their destination, and giving to the Superintendent the power of inspecting these vessels with the view of ascertaining that proper food and medical comforts were supplied for the coolies during the voyage. There was an exception made from the provisions of the Act in the case of parties of laborers—who, to the number of not more than ten, might agree among themselves to go from the particular place in which they were living to any one of the Tea Districts—which provided that, as to such parties, the Act should not apply; it being considered that, in point of practice, these small parties of laborers were generally made up at the suggestion of some return coolie, who would very well be able to give his countryman sufficient information with regard to the objects and incidents of such an engagement as they proposed to form, and would accompany them from their own District to the place of their labor. So far matters stood, as far as legislation was concerned, from 1863 to 1865.

Under the Act large emigration took place for the first three years, which, in the subsequent years, from circumstances probably in no way connected with the operation of the Act, had greatly fallen off. The emigration for 1867-68, in so far as any statistics were at present available, extending only to ten months of the year, showed not more than some eighth or ninth of the emigration of the two previous years. But in 1865 it was considered necessary that there should be further legislation, and to a great extent this further legislation went in the same direction as the Act of 1863, namely, for the protection of the laborer; but the Act of 1865, while introducing many additional provisions of that character, also introduced some for the protection, or rather assistance, of the employer when the laborer had arrived at the place of his destination, to ensure as far as might be that the employer might derive the fair and just fruits of his bargain.

But the Act of 1865 made two very important alterations as regards the terms of the contract. It first reduced the maximum term of the duration of the contract from five to three years, and for the first time it dealt with the question of wages, fixing the minimum rate of wages at Rs. 5 per month. There was also a provision introduced with regard to the maximum amount of labor to be exacted, which in substance said that no laborer was to be required to work for more than six hours at a time for six consecutive days, and to be required to do more than nine hours labor in any one day. Then, in addition to that, in carrying out what occurred to him as one of the grand objects which the Bengal Government and the Legislature had had throughout, namely, the prevention of mortality, provision was made by which employers or owners of Tea Estates were required to provide hospital accommodation. That was done in a very general way without any particular details being laid down; and with the further view of the prevention of mortality and the prevention of ill-treatment and ensuring as far as might be the proper treatment of laborers, Protectors of Laborers were established, with Inspectors under them. And these persons by the Act of 1865 were given power to demand yearly returns of the number of coolies employed by Planters and the names of the coolies. They also had the power of inspecting Tea Estates, examining the state of the laborers, and receiving complaints from the laborers, and, if they found it necessary, of causing the complaint to be investigated before a Magistrate, or, if they thought the complaints unfounded, of dismissing them. These were the principal provisions which had been introduced down to 1865.

Well, notwithstanding the improvements or intended improvements which had been introduced, it was found practically that the rate of mortality amongst the laborers, after their arrival at the Tea Districts and after they had been despatched to their gardens and had commenced to work, was getting from bad to worse. It had been observed that the previous attempts at legislation had rather been directed to the cure of sickness and the prevention of mortality in the interim between the original recruiting of the laborer and his arrival at the place of his destination in Assam, or, as the case might be, than to his position after his arrival at the scene of his labors. All that had hitherto been attempted with regard to that, was the general provision to which he had already alluded with regard to the provision by employers of hospital accommodation. The result of the enquiries and statistics bearing on the question of mortality and other matters arising out of the working of the two Acts of 1863 and 1865 led to the introduction into this Council of the Bill of 1867. That Bill, like the Bill which he now had the honor to ask leave to introduce, was admitted to be a consolidation of the previous Acts of 1863 and 1865, with certain improvements. In a measure supplementary to that, were provisions requiring employers not only to provide certain hospital accommodation —and with regard to hospital accommodation many more detailed provisions were introduced—but also to supply what the evidence fully led to the conclusion it was essentially necessary to supply, that was proper house accommodation; proper as regards cubic space and necessary drainage, and other matters which, as the Council knew, were of as much importance in the prevention of mortality as any actually curative treatment could be. There were also provisions introduced which it might be said were of great importance with regard to the question of labor. It was proposed to provide in the Bill of 1867 that each employer should prepare a schedule of tasks which his laborers might be called on to perform, and these schedules were to be subject to the revision of what he might call a Committee of Adjustment, which was to consist of the Protector of Laborers, of some employer to be nominated by him, and of some person to be nominated by the employer whose schedule was to be considered, or on his default by the Protector. There was also a provision from the operation of which there was very strong ground of anticipating a beneficial result, namely, the enabling the Lieutenant-Governor from time to time to prohibit the transport of laborers from any particular District or Province under his Government, emigration from which, for the time being, owing to particular circumstances, it might be thought would result in the persons recruited as laborers being more likely to suffer and more likely to die when transported to the Tea Districts in Eastern Bengal.

The Bill which was introduced in 1867 underwent very lengthy discussion on its passage through the Council, both in Select Committee, and also after the Bill came up from Select Committee; and, although ultimately, and after the Bill had passed the Council, and had received the sanction of His Honor the Lieutenant-Governor, it did not obtain the assent of the Governor-General, he (the Advocate-General) might state that the grounds of that dissent were limited to one particular clause of the Act as it stood, and had no reference whatever to any disapproval on the part of the Supreme Government of any of those provisions to which he had hitherto alluded. Although in the end the Bill of 1867 never passed into substantive law, and, although considering that we were now in 1869 with the law in the same shape as it was four years ago, he, even now, was very far from thinking that the discussions which then took place, and the enquiry which was then gone into, had been lost, if for no other reason than because the measure, as finally passed by this Council and assented to by the Lieutenant-Governor, was the result of an investigation at a

time when the interests of the planters were represented by Mr. Bullen Smith, who was not only perfectly acquainted with the subject, not merely with regard to the interests of the planters, and the interests of the laborers and the commercial aspects of the question, but because he engaged in the enquiry with singular fairness and singular acuteness. And the result was that, in now asking the Council for leave to introduce a consolidating Bill, he (the Advocate-General) was only asking leave to introduce what would be substantially the re-introduction of the Bill of 1867, with certain not unimportant pórtant alterations which had been introduced as the result of the experience of the working of the Act of 1865 in particular estates, and of the enquiries of a Commission which had been deputed to the Tea Districts.

The principal alterations which the measure which he now asked leave to introduce made in the Bill brought before the Council and passed in 1867, were these. It had been found, and one could very easily understand that it it would be so, that the system of only allowing recruiting by licensed contractors had more or less tended to throw the supply of coolie labor into the hands of a comparatively small number of individuals, that was to say, that it tended to create a monopoly, and from that and other circumstances the cost to the employer of a laborer landed at the place of his destination was very large indeed. It was proposed, since 1867, that without doing away with the present system of licensed contractors, the system should not be kept as it was, or rather as under the present state of the law it was, an exclusive system, but that, side by side with it, employers should be allowed to carry out a system of recruiting by garden sirdars, that was, by persons who had themselves been employed in Tea estates, and who having personally the confidence of particular employers, should be sent themselves to Chota Nagpore and other Districts, from whence coolie labor for the Eastern Districts was recruited, and recruit for their particular employers; that instead of recruiters licensed by Calcutta contractors going from Calcutta into the labor Districts and there recruiting laborers, they should, in the first instance, be allowed to engage with persons who had come directly from the future scene of their operations, and who would be able better than any one else to explain what the nature and terms of their engagements would be. That proposal was coupled with a suggestion that the operation of the law (whether of the Acts of 1863 or 1865, or of the measure which he now asked leave to introduce) should only begin to apply to laborers so recruited, after they had arrived at the place where they were to be employed. It had been considered—it would be, of course, a matter for the Council to determine when the Bill came to be discussed—that while the adoption of the double system of licensed recruiting through contractors and recruiters, and of recruiting through the authorized agents of employers of and for particular gardens, was desirable only so far, it would be anything but desirable to exclude the laborers recruited under the latter system from the operation of the law, any more than those who were recruited under the contract and licensed recruit system. In point of fact, he (the Advocate-General) thought it must be pretty clear, speaking *primâ facie*, that to do that would be to put an end to the licensed system altogether, or, in other words, to nullify all the provisions of the law until the laborers arrived at the scene of their labor. At present the only question to which he need draw the attention of the Council was that it was proposed to supplement, as it were, the present system of recruiting by contractors with the system of private recruiting by persons empowered by the owners of particular gardens.

The Bill would also, he hoped, be found, as regards many matters of detail, to be an improvement on that of 1867 as regards both hospital accommodation, medical inspection during the very critical period of transport to the depôt and arrival at the place of destination, and other matters. The only

point on which the Bill of 1867 made shipwreck was one in no way interfering with the general provisions or ninety-nine hundredths of the provisions of the proposed measure; and whatever difficulty there was with regard to that in 1867 had, he believed, now been practically removed.

With these observations he would move for leave to introduce the Bill.

The motion was agreed to.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

MR. DAMPIER said that a communication had been addressed to the Government of India on the subject of the amendment of which he had given notice; but, as no reply had yet been received, he would ask leave to postpone the consideration of the amendment.

MR. THOMPSON said the only Sections of the Bill that remained to be considered were Sections 8 and 15; but he believed the Hon'ble Member at whose instance the consideration of those Sections was postponed, would not be prepared to move any amendment until the question, the consideration of which had just been postponed, was disposed of.

Sections 106 and 107 also remained to be considered, but they related to the application and extension of the Act, and could not well be considered till the rest of the Bill had been settled.

The only Section that could now possibly be considered was the amendment after Section 101, of which the Advocate-General had given notice.

THE ADVOCATE-GENERAL said that the course which had already been taken showed that the Council could not get through this Bill to-day; and as the Section of which he had given notice involved what in regard to procedure was new, and of some practical difficulty, he should also ask the leave of the Council to postpone the consideration of the Section.

The further consideration of the Bill was then postponed.

The Council was adjourned to Saturday, the 12th instant.

Saturday, 12th June, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

The Hon'ble Ashley Eden,	H. H. Sutherland, Esq.,
H. L. Dampier, Esq.,	Koomar Satyanund Ghosal,
A. Money, Esq., C. B.,	Baboo Issur Chunder Ghosal,
A. R. Thompson, Esq.,	and
H. Knowles, Esq.,	Baboo Chunder Mohun Chatterjee.
Baboo Peary Chand Mittra,	
T. Alcock, Esq.,	

COURTS OF SESSION.

THE HON'BLE ASHLEY EDEN moved for leave to bring in a Bill to empower the Lieutenant-Governor to direct Courts of Session to be held in different towns in a District. In doing so, he said that in 1865 the practice was introduced of holding occasional Sessions at the out-stations of Kooshteah and Ranaghat in the District of Nuddea, because owing to the state of business in the District and the convenience of parties and witnesses, and also because it gave an enlarged field for the preparation of the Jury Lists, it was found very convenient to hold Sessions at different parts of the District for the disposal of criminal business generally. But the High Court had lately recorded their opinion against the legality of the practice. They said, that without expressing any judicial opinion on the subject, it seemed to the Court extremely doubtful whether trials held in places other than the usual place of the sitting of the Court of Session or the headquarters of the

Magistrate of a District are legally held, and whether Jury Lists for such places could properly be prepared by the Collector. And they therefore suggested that a Bill should be passed legalizing what had hitherto been done, and enabling Sessions Judges to hold trials in different places in their Districts, in addition to the usual place of holding Sessions in such Districts.

The Bill laid before the Council was a short one and proceeded to legalize trials which had already been held under this arrangement, whether such trials were really formal or informal. It would enable the Lieutenant-Governor, hereafter, to appoint places for holding Sessions in any District other than the he adquarters of such District, and would also enable the Collector to prepare a list of jurymen for each of the Sub-Divisions in which such places may be situate.

The motion was agreed to.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE HON'BLE ASHLEY EDEN said that, in the unavoidable absence of the learned Advocate-General, he had asked him (Mr. Eden) to bring forward the motion which stood in the List of Business that the Bill to amend and consolidate the law relating to the transport of laborers to Assam, Cachar, and Sylhet and their employment therein, be read in Council. The Advocate-General, in moving for leave to bring in the Bill, discussed in such details the whole course of legislation on the subject, and stated so fully the reasons which led to the introduction of this Bill, that it was hardly necessary that he (Mr. Eden) should detain the Council at any length on this occasion. The chief provisions of the new Bill, had already been before the Council—though not perhaps as at present composed—in the Bill of 1867, which went through all its stages in the Council, but did not subsequently become law; and therefore the great majority of the Sections of this Bill had practically been discussed aud assented to by the Council: but of course this did not in any way bind the Council as at present composed to accept them if they did not concur in them, There were besides new Sections added since 1867, in consequence of the report of the Tea Commission and the discussions which took place in consequence, and they would require careful consideration, particularly those relating to the recruiting of laborers by Garden Sirdars, the fixing of the daily tasks, house accommodation, and sanitary regulations, and the provisions for the redemption, and cancellation of contracts.

The provisions relating to Garden Sirdars were to be found in Sections 12 to 25, Section 28, and Sections 59 to 61, of the Bill. It was therein provided that the Garden Sirdar would come from the Tea Districts armed with the certificate of the Magistrate of the District in which the plantation on behalf of which he was to act was situated, and this certificate would state that he was a *bonâ fide* Garden Sirdar, and that he was about to engage laborers for his employers, and would specify the District in which he was so about to engage laborers. He would then proceed to the District in which he was going to recruit, and his certificate would be countersigned by the Magistrate of such District, who would require that proper accommodation for the laborers should be temporarily provided; and for the supervision of such accommodation and the treatment of the laborers during their stay in the Districts in which they were recruited, the Magistrate would have all the powers of a Superintendent of Labor Transport. The laborers would then be taken to the Medical Inspector, who would generally be the Medical Officer of the Sudder Station, and be examined as to their fitness to travel, and, generally, as to their capability to work in the District to which they were about to emigrate. They would then be taken before the Magistrate of the District in which the engagement was entered into, and have explained to them where they were going to, what the contract was, and the person by whom they were being engaged. After that, the laborers would

be allowed to leave in company with the Garden Sirdar, and the authorities of the District to which they were emigrating would satisfy themselves that the same men had arrived who had been engaged. Personally he (Mr. Eden) thought this was a matter which would require careful consideration, that is to say, it would, unless very carefully guarded, encourage a loose procedure that would amount to an evasion of those provisions of the Act which had been found necessary with regard to laborers recruited by contractors and licensed recruiters. He thought it was quite certain that these Garden Sirdars were an ignorant class themselves, and were no more fit to be trusted than the old contractors before the passing of the Act of 1863 were, and he thought that it could not be expected that these men would be better able to look after these large bodies of men, and to arrange for proper care and regularity in their transport, than the old contractors had been. At the same time he (Mr. Eden) thought there was a great deal of good to be got from private recruiting if kept within proper limits, and if such operations were confined to bodies of men not too large, say parties of 20 or 25 men, who could be conveyed in a single boat, and were probably fellow-villagers of the Garden Sirdar, or, at all events, people who knew him; but when it came to 50 or it may be 100 men under two Sirdars who had joined together, it ought to be a matter of very careful consideration for the Council whether they should sanction such a setting aside of the law, with all the dangers of reproducing exactly the state of things which had led to the first interference of Government. These men would be wrongfully induced to emigrate by the Garden Sirdar, who had as much interest in deceiving them as the old recruiters; they would be ill-fed, ill-clothed, cheated, and deprived of all medical aid by these Sirdars, who were altogether unfit to be trusted with such a duty, and if they went by road these large disorderly gangs would be sure to be attacked by cholera, and carry it throughout the country they passed through.

The Hon'ble Ashey Eden.

As to the fixing of nerricks, it had been decided that every employer should fix a daily task, in the form of a Schedule to be hung up at the door at the principal place of payment of the laborers. If any laborer considered the tasks unfair, he might apply to the Inspector of Laborers, who was styled the Protector under the existing laws, and the Inspector would then convene a Committee, consisting of himself, some employer nominated by him and some person to be nominated by the employer whose Schedule was to be considered, or, on his default, by the Inspector, and they would be empowerd to revise and adjust the Schedule in any manner they thought fair.

Then there were a number of new Sections as to house accommodation, water-supply, and sanitary arrangements, giving power to the Lieutenant-Governor to define the nature of the accommodation to be supplied; and by Section 71 the employer was compelled to provide his laborers with rice of a proper quality, and in sufficient quantity, on the terms laid down in the contract.

The other Sections were not very materially altered from the form in which they now exist. Section 88, providing for the redemption of contracts by laborers who wished to pay up a sum of money and determine their engagements, had been put on a new footing. The terms on which laborers would in future be able to redeem their contracts were stated in the following words —

"The value of the unexpired term of contract shall be deemed to be the aggregate amount of one Rupee for every month of the unexpired portion of the first year, of three Rupees for every such month of the second year, and of five Rupees for every such month of the third year of the original term of the laborer's engagement."

He (Mr. Eden) though it was agreed by all parties that this would be the fairest way of fixing the value of a coolie's release during the currency of his contract.

Section 102 was one which had led to much discussion in the previous

consideration of this Bill. It provided for the cancellation of a contract by desertion, and provided that—

"Whenever any laborer shall have actually suffered terms of imprisonment, amounting in the whole to six months, for desertion from his employer's service, it shall be lawful for the Inspector, and he is hereby required, to cancel the contract of such laborer."

He (Mr. Eden) thought that when a laborer had, by a series of desertions, incurred the punishment of six months' imprisonment, it was very clear that the cancellation of his contract would be no very great loss to the planter.

These were the principal alterations in the present Bill, though of course there were several alterations in the wording of other provisions to which be did not think it necessary to advert.

MR. SUTHERLAND said that, although he had considerable personal interest in the subject of this Bill, he was not prepared at this stage to enter into any discussion on its provisions. The Bill had only been placed in his hands yesterday, and on accouut of the out-going English mail then, and the in-coming letters this morning, he had not been able to read it carefully. He had only glanced at a few Sections, amongst them those to which the Hon'ble Mover had just referred, regarding recruiting by Garden Sirdars. While he (Mr. Sutherland) would willingly admit the difficulty of removing all restrictions from private recruiting, if permitted in large numbers, he thought these sections imposed so many restrictions and enactments that, practically, they would nullify the whole plan of recruiting by Garden Sirdars. He believed that, as a rule, the Sirdar went about his work in good faith, and really desired to secure healthy suitable people for the garden on which he was employed. The Sirdars had from three to five years' experience of the climate and the nature of the work; and as it could hardly be said that it was their interest to mislead their relations and friends, he thought they should be permitted to recruit with as few restrictions as possible.

The oniy other question on which he would now say a word was the duration of the agreement, *viz.*, three years. He believed the almost universal feeling amongst tea proprietors and planters was that the term should be extended to five years. He had read carefully the arguments in favor of the shorter term, and he had practical experience of the weighty reasons urged for an extension. He confessed that he was not sanguine that the longer term would be conceded; but to his mind the grounds for an extension appeared to preponderate over anything he had heard in favor of the existing law. He had no doubt this important question would be duly considered in Committee.

The Bill, as a whole, as he (Mr. Sutherland) understood it, was very much a transcript of the Bill of 1867, which was generally accepted by the public interested in tea cultivation.

He had nothing further to say, except to thank the Government for bringing in the Bill, which he trusted would be equally acceptable to employers and employed.

BABOO PEARY CHAND MITTRA said, he was sure the Council felt thankful to the Hon'ble Mover for the great interest he had taken in the labor question for many years, and for the active part he had taken in the legislation on this subject. The Bill before the Council was an improvement on former legislation, inasmuch as it ensured greater protection to the laborer, while the interests of the employer had not been overlooked. There were, however, several sections of the Bill which would require careful consideration in Select Committee, and if they were modified the Bill would be equally just to both parties. He agreed with the Hon'ble Member who spoke last that it would be very much to the advantage of those engaged, and of planters, if the term of service were extended to five years. He (Baboo Peary Chand Mittra) was also of opinion that the annual tax of two rupees on every laborer was heavy, because it was well known that many of the gardens had been closed; labor formed a heavy charge, and many gardens were living, as it were, from hand to mouth: if therefore the Section

to which he had referred could be modified, it would be very much to the interest of the planters.

There were also other Sections on which it would be well to submit remarks in Committee; he would not, therefore, at present further take up the time of the Council.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Advocate-General, Mr. Knowles, Mr. Sutherland, Baboo Issur Chunder Ghosal, and the Mover.

COURTS OF SESSION.

THE HON'BLE ASHLEY EDEN applied to the President to suspend the Rules for the conduct of business to enable him to move that the Bill to empower the Lieutenant-Governor to direct Courts of Session to be held in different towns in a District be read in Council.

The President having declared the Rules suspended,—

The Hon'ble Ashley Eden moved that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of Mr. Thompson, Baboo Chunder Mohun Chatterjee, and the Mover.

The Council was adjourned to Saturday, the 19th June, 1869.

Saturday, 26th June, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.,
A. Money, Esq., C. B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Koomar Satyanund Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

STAMPS.

MR. MONEY moved for leave to bring in a Bill to authorize the remission of penalties in respect of deeds executed in Calcutta before the 1st October, 1860, and insufficiently stamped. He said that Regulation XII of 1826, when passed, imposed certain penalties for the non-imposition of the proper stamp, and gave power to remit such penalties only when the omission to impose such stamp was caused by accident, inadvertence, or other unavoidable cause. This Regulation, at first not accepted by the Supreme Court as binding on it, in consequence of having been passed without certain formalities required by Act of Parliament, was afterwards re-enacted as a rule, ordinance, and regulation, which was registered in the Supreme Court on the 14th July, 1827, and took effect from that date. But the mode of enforcing the observance of that law was by means of penalties, and the process for the enforcement of such penalties was an expensive one. Most persons, therefore, preferred running the risk of being prosecuted for the non-observance of the law, to paying the amount of stamp duty imposed by its provisions, especially as under this Regulation unstamped deeds were not rendered null and void. Thus between 1827 and 1860 many unstamped deeds had been executed. There were one or two cases lately in which the parties came to the Revenue Authorities to fix the stamp duty on deeds so executed under that law, but objected to pay the penalty of twenty times the duty which the law imposed. Many of these persons were merely the heirs or transferees of the parties who executed the deeds, and were in no way to blame for the omission to stamp the deeds. But under the law the Revenue Authorities have no power to mitigate the penalty in cases such as these, and can only affix the proper stamp after payment of the full amount of penalty imposed by the law. It is considered advisable to give them authority to remit or mitigate.

With these remarks he would move for leave to bring in the Bill.

The motion was agreed to.

RECOVERY OF WATER-RATES.

MR. DAMPIER said that in accordance with the permission given at a

former meeting of the Council, he had now the honor to move that the Bill to provide for the recovery of rates for water supplied for purposes of irrigation be read in Council. The Statement of objects and reason appended to the Bill was simply this—

"The Government of India having become owners of the works of the East India Irrigation and Canal Company, the terms of Act VIII of 1867 of the Bengal Council are no longer applicable to the existing state of things, to meet which this Bill is introduced."

As few changes as possible had been made. Sections 2 and 3 continued the provisions of the old Act regarding the powers of officers, just as they were when the canals belonged to the Irrigation Company. Section 4 provided that the powers which the existing law conferred on the officers of the Company should now vest in such servants of the Government as the Lieutenant-Governor shall appoint.

It was found necessary to repeal Section 2, which provided that the Lieutenant-Governor of Bengal should from time to time make rules for the supply of water for the purpose of irrigation, because the Section provided that the rules should be in accordance with the provisions of an indenture made between the Government of India and the East India Irrigation and Canal Company, which no longer had effect. Section 5 was substituted for this Section, and would merely enable the Lieutenant-Governor to make such rules as he may consider necessary.

It had also been found necessary to alter Sections 3 and 4 of the existing Act in consequence of another change in circumstances. These Sections put the recovery of water-rates and distresses for water-rates on precisely the same footing as rent due for land, and accordingly they provided that such rates could only be recovered in the Collectors' Courts under Act X. of 1859. But soon after the Bill now before the Council would be passed, the other Bill for the transfer of rent suits to the ordinary Civil Courts would probably become law, and it would obviously be anomalous, when the cognizance of suits for rent shall have been transferred to the Civil Courts, that the trial of suits for the recovery of water-rates should continue under the provisions of Act X. of 1859. Therefore, in lieu of Sections 3 and 4, it had been provided in Section 6 of the present Bill that the provisions of every Act for the time being in force in the district in which such water may be supplied for the recovery of rent, shall be applicable to the recovery of such arrears of water-rate, and such water-rate shall be recoverable by such and the same procedure, and before such and the same Court, as rent due for the land for which such water shall have been supplied would for the time being be recoverable. That was to say, where the Civil Courts had cognizance of suits for land rent, there they would have cognizance under the same procedure of suits for the recovery of water-rates, and all suits arising therefrom.

The motion was agreed to, and the Bill referred to a Select Committee consisting of Mr. Money, Koomar Satyanund Ghosal, Baboo Issur Chunder Ghosal, and the Mover, with instructions to report within a fortnight.

SUITS BETWEEN LANDLORDS AND TENANTS

MR. RIVERS THOMPSON said that with reference to the next motion which stood in his name he believed the Hon'ble Member opposite (Mr. Dampier), who intended to propose an amendment with regard to the question of the ejectment of ryots and farmers in certain cases, was not prepared to proceed with his motion to-day; and unless the other Hon'ble Member (Baboo Issur Chunder Ghosal) who had another amendment on the subject, wished to proceed with it now, it would perhaps be advisable to postpone the consideration of the question for a week. He (Mr. Thompson) understood that the reply of the Government of India to the communication which had been made to it on the question of stamps, had only just been received, and the Hon'ble Member was therefore not prepared to consider the question to-day.

MR. DAMPIER said that it was not that he was not prepared to go on with the amendment. As at present advised, and notwithstanding the unfavorable answer of the Government of India as to the question of stamps, he was prepared to press his amendment as it stood. But as the answer of the Government of India considerably modified the practical effect of his amendment, he thought it but fair to give Hon'ble Members time to consider the matter. He should therefore wish to say that at the next meeting he would still recommend those Hon'ble Members who might be said to represent the landholding interest to accept the amendment which he proposed as a compromise. He should be very glad to see the advantage of a low institution fee being allowed to the landholders, but now that was entirely beyond the power of this Council to give, and he thought no amendment would be carried which would secure that advantage. He should therefore strongly recommend those Hon'ble Members to accept his amendment as a compromise. If the landholder lost the advantage of the cheap institution fee, the ryot, on the other hand, who was defeated in the Court of first instance, lost the benefit of a cheap appeal, and the other benefits which the landholder enjoyed under the existing law were secured to him by the proposed amendment.

The PRESIDENT said that he must call the Hon'ble Member to order; he was discussing the nature of an amendment before the motion for the further consideration of the Report of the Select Committee had been carried.

MR. RIVERS THOMPSON then moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

BABOO ISSUR CHUNDER GHOSAL said that he had the honor of bringing to the notice of the Council on a former occasion how there was a failure of justice in the case of dependent Talookdars who held at variable rents, and who could not be treated as other landholders in matters of remission and enhancement of rent under certain circumstances; and he had cited a case decided by a Divisional Bench of the High Court in support of his argument. He therefore now begged to move, according to notice, the following amendments in Section 14:—

"The insertion of the words 'dependent Talookdar who holds at a variable rent and no', after the word 'No,' in line 1;

"And the insertion of the words 'dependent Talookdar' before the word 'under-tenant,' in lines 13, 24, and 26."

MR. RIVERS THOMPSON said he might be allowed to explain that under Section 16 dependent Talookdars holding at fixed rents were not liable to enhancement. There were, however, a few instances of dependent Talookdars holding at variable rates of rent, and the Courts had found that there was no procedure under which suits for enhancement of their rents could be entertained. Section 14 merely related to under-tenants and ryots, and did not speak of dependent Talookdars. The introduction, therefore, of the words proposed by the Hon'ble Member would simply be a matter of procedure, which would supply an omission which had caused some inconvenience, and would enable Zemindars, in the few cases which arose, to have some mode of proceeding against this class of subordinate holders. He would therefore have no objection to the insertion of the words proposed.

The motion was put and agreed to.

Similar amendments were made in Sections 15 and 18.

MR. THOMPSON said that in consequence of the amendments just carried, amendments of the same nature would have to be made in Sections 19 and 20, for if the rent of a dependent Talookdar were liable to enhancement, he ought also to have a right to abatement of rent, and to relinquish his land in the same manner as ryots were so entitled under Sections 19 and 20.

Similar amendments were then made in Sections 19 and 20.

MR. DAMPIER said that he would now formally propose the amendment which stood on the paper in his name, with a slight addition which was necessitated by the answer which had been received from the Government of India. He had already this day by anticipation said most of what he had to say in support of the amendment, and which would have been more regularly said in this place, and it only remained for Hon'ble Members either to proceed to give their votes on it now, or to have the formal putting of the amendment postponed till the next meeting. He would also mention that the Section would come after Section 55 of the Bill as now printed better than after Section 43, because Section 55 related to ejectment, and the proposed amendment continued the subject.

It would be necessary to add a proviso to Clause A. of the amendment as it stood printed. The point of the amendment was that immediate execution should follow the decree by giving possession to the Zemindar; but in certain cases this could not be done till after the expiration of fifteen days. The provision of Section 55 was that in all suits for ejectment of a ryot or cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount be paid within fifteen days from the date of the decree, execution shall be stayed. Therefore it would be impossible in such cases, with reference to Section 55, to give an order for immediate execution of the decree. He (Mr. Dampier) therefore proposed that after the first Clause of his amendment marked A. the following words should be added :—

"Provided, however, that in cases in which Section 55 of this Act is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree."

That would apply where the decree was for ejectment or cancellation of a lease on account of the non-payment of arrears due.

With those remarks he would move the introduction of the following Section after Section 55 :—

"Whenever in any suit brought by any Zemindar or other person in receipt of the rent of land, to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court shall pass a decree in favor of the plaintiff, no application of the form provided in Section 212 of the said Act VIII of 1859 shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree. Provided, however, that in cases in which Section 55 of this Act is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree."

BABOO PEARY CHAND MITTRA said, as the Hon'ble Member did not press the immediate consideration of his amendment, and as there were three other amendments on the same subject before the Council, it would perhaps be well if the whole of these amendments were referred to the Select Committee for report. He believed an amendment recommended by the Select Committee would come before the Council in a more mature shape after they had discussed the merits of all the proposed amendments, and seen the desirableness of blending all the amendments into one. The Council would then be in a better position to come to a decision on the point.

MR. SUTHERLAND said that he could not assent to the proposition of the Hon'ble Member who spoke last, but as the Hon'ble Mover of the amendment had expressed his willingness to postpone the discussion of the question, if such should be the wish of the Council, he (Mr. Sutherland) would suggest that the consideration of the amendment should be postponed to the next meeting.

THE PRESIDENT said that the better course would be to postpone the condiseration of the amendment. The suggestion of the Hon'ble Member on his left (Baboo Peary Chand Mittra) was to refer the Bill to a fresh Select Committee, there being at present no Select Committee existing.

The further consideration of Mr. Dampier's amendment was then postponed.

THE ADVOCATE-GENERAL said that he thought the next motion in order was one of his own for the introduction of a Section which had for some time been in print and before Hon'ble Members, and which he had intended to introduce after what was now Section 101. It would be remembered that he proposed its introduction as necessary in consequence of what on his suggestion the Council had already sanctioned, namely, the introduction at the end of Section 68 of a Clause which would do away with what had been complained of as the prejudicial effect of sub-letting by actual cultivators in the exercise of the right of distress against crops. When the Bill was last before the Council, he should have brought forward the amendment, but did not do so because, as stated at the time, since putting it into shape, certain difficulties had occurred to his mind. It was a question of how an innocent actual cultivator, who was not in arrears, was to be completely protected from the result of a distress which was caused by the default of his lessor. The amendment as it stood would *pro tanto* have given that protection, because it extends at any rate to one large class of cases, where the party claiming the rent and claiming to exercise the right of distress did not contend that more rent was due to him than was actually and really due. And in the great majority of cases the person who had actually to pay to get rid of the distress, would find the provision sufficient to protect him. But then it had occurred to him, since that, that there might be very many cases in which distress might be put in by a person without title, and the innocent actual cultivator would have no knowledge of the person who ought to have paid or of the right of the claimant. Again, there might be a large class of instances in which the amount claimed might be more than what might be really due, and as the Section stood, the necessary protection to the actual cultivator not in default would be wholly insufficient.

He (the Advocate-General) made these observations, as he thought that the question as arising on the addition to Section 68, which had already been adopted, should be further considered at the next meeting of the Council. The longer he considered it, the more seemed the difficulty of at once giving what really was a new power or rather a new right to the Zemindar or superior landlord, while at the same time providing sufficiently and satisfactorily that the exercise of that new and extended right should not affect an innocent party. And therefore, with the permission of the Council, he asked that at the next meeting they should go back to Section 68, and re-consider the addition which on his motion was introduced. He thought it proper to go into this subject now, because it was retracing the steps previously taken, and also because the Hon'ble Member opposite (Mr. Money) had another proposed Section for which the Section as it now stood was substituted.

The further consideration of the Bill was then postponed.

PRISONERS' TESTIMONY.

MR. RIVERS THOMPSON said that it would be in the recollection of the Council that the Bill to provide facilities for obtaining in Civil and Criminal cases the evidence and appearance of prisoners detained in any jail or prison, and for service of process upon such prisoners, which he had the honor to introduce, and which had reached an advanced stage in the Council, was left in abeyance, pending the disposal of a similar Bill in the Council of the Governor-General. That Bill had now been passed into law, and applied to Bengal as well as to the other presidencies. The Bill before this Council was consequently unnecessary, and he would therefore move that the Select Committee be discharged and the Bill withdrawn.

The motion was agreed to.

The Council was adjourned to Saturday, the 3rd July.

Saturday, the 3rd July, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
H. L. Dampier, Esq.,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland Esq.,
Koomar Satyanund Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

STAMPS.

MR. MONEY postponed the motion, which stood in the list of business, that the Bill to authorize the remission of penalties in respect of deeds executed in Calcutta before the 1st October, 1860, and insufficiently stamped, be read in Council.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between landlord and tenants, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

MR. DAMPIER, in moving that the following Sections be introduced after Section 55, said that at the last meeting of the Council the discussion on the Bill ended at the point at which he had requested the President to formally put this amendment, and it only now remained to be put:—

A. "Whenever in any suit brought by any zemindar or other person in receipt of the rent of land, to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court shall pass a decree in favor of the plaintiff, no application of the form provided in Section 212 of the said Act VIII. of 1859 shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree. Provided, however, that in cases to which Section LV. of this Act is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree.

"B. It shall not be lawful for the Court to entertain any application for stay of execution of any such order pending any appeal, and no tenant who shall have been evicted under any such order shall be restored to possession so long as the decree under which such order was issued shall remain unreversed."

BABOO PEARY CHAND MITTRA said that he regretted he could not accept the amendment before the Council. In its present shape, the amendment was incomplete. In Section A, there were four classes of persons who could be ejected—cultivators not having right of occupancy, farmers, other tenants holding only for a limited period, and agents. But in Section B only tenants were referred to: the other classes were not specified in it. This omission, it was true, could easily be supplied. But the great objection to the amendment was that it did not meet the question of stamps. If a suit for ejectment were instituted in the Civil Court, the full amount of the stamp duty on the value of the property regarding which the suit was instituted would have to be paid; whereas if the suit were brought before the Collector, a stamp of the value of eight annas would suffice for the purpose. So far as the interest of the zemindar was concerned the amendment was good enough; but in the interests of the cultivating classes—of the classes more intimately connected with the cultivation of the land—he (Baboo Peary Chand Mittra) objected to the amendment, because the expense would ultimately fall on them. The present amendment was, therefore, not so good as some of the amendments previously proposed, and he should therefore oppose it.

MR. RIVERS THOMPSON wished to know whether the Hon'ble Member opposite (Baboo Issur Chunder Ghosal) intended to take any steps with regard to the notice of amendment which stood in his name.

BABOO ISSUR CHUNDER GHOSAL said that all he had to say was that if both the amendments were proposed to

the Council, it would be for the Council to decide between them. In the amendment which stood in his name it was provided in Section C that no order made in any ejectment proceeding should be appealable, but that there may be a review of judgment. On looking at the prsent law, however, he found that there was an appeal to the Commissioner; he would, therefore, rather have the existing law in its integrity, than introduce what he had originally proposed. The amendment which he would now move would be to introduce the following Sections after Section 55:—

A. "If any zemindar, or other person in receipt of the rent of land, require assistance to eject any cultivator not having a right of occupancy; or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy; or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector or other person exercising the full powers of a Collector of a District wherein the land in dispute may be situate; and such Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated *ticca-zarí-peshgi*, or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance, either in money or by the usufruct of the land. In all such cases the parties must proceed by regular suit."

B. "Orders made under the preceding Section shall be executed in the like manner as decrees under this Act, save that the same shall be carried out by the Collector or other person as aforesaid, and not by the Civil Court."

C. "Any order made in any such enquiry by the Collector or other person exercising the full powers of a Collector as aforesaid, shall be appealable to the Commissioner of the Division if made within a month from the date of such order."

D. "Any party to such proceeding may, within one year from the date of any such order, whether the same shall or shall not have been made on appeal, institute a regular suit to set aside such order."

MR. RIVERS THOMPSON said that with reference to the amendment before the Council he stood somewhat in the position that he should personally very much prefer that the proposed Sections should be altogether omitted, and the law as regards the whole procedure for ejectment suits left under Act VIII of 1859. He was not certain whether the question of having a different form of procedure for this particular class of suits had ever been put to the vote of the Council; for himself he considered that they did not call for any exceptional treatment; but from the general tenor of the expressions which fell from Hon'ble Members, it seemed to be the feeling that some form of procedure should be adopted with regard to ejectment suits different from that which applied to other suits; and the question now before the Council was which of the two amendments should be adopted. He confessed that if he had to choose between the two he should support the amendment of the Hon'ble Member opposite (Mr. Dampier). As he understood that amendment, it was intended that the special form of summary procedure which had been advocated by some Members for the institution and investigation of all ejectment suits should be withdrawn; but that in all such cases, while the suit might be instituted and carried on according to the regular procedure of Act VIII of 1859 up to the point of obtaining a decree, when the decree had been obtained, the exceptional procedure now suggested was to have effect. Ordinarily under the Civil Procedure Code the provisions of Section 212 of Act VIII of 1859 would govern the form of application for the execution of a decree. But the provision now proposed was that as soon as a decree was obtained adjudging that the tenant was holding on without a lease, or was liable to ejectment for non-payment of arrears of rent, application for execution might be made orally in Court, and execution at once secured by the eviction of the tenant.

It was further added that this decree should not be liable to be postponed or delayed except on reversal in appeal by the evicted party, and thus a certain degree of despatch in execution

might be obtained. It was satisfactory, however, to find that the proposed amendment as it stood would not affect *ex-parte* decrees, in which the tenant without any appeal might revive the suit under Section 119 of the Civil Procedure Code; nor would it affect the intervention of third parties not previously before the Court, whose interests might be injured in these summary execution proceedings. The landlord would, therefore, practically gain very little; and, as before stated, if he (Mr. Thompson) had his own wish in the matter, he thought the procedure in those suits should be same as in all ordinary suits. But if the Council insisted on having a different form of procedure, the amendment of the Hon'ble Member opposite, as showing the least divergence from the regular process, had his approbation in preference to the more radical changes which the other Hon'ble Member advocated.

MR. KNOWLES said that he would be glad if the Hon'ble Mover of the amendment would inform him how such a suit was to be valued for stamp duty. In a Civil Court every suit must have some value fixed. How was the value to be fixed in ejectment cases? would it be on twelve months' rental, or how?

MR. DAMPIER said that he could only answer the Hon'ble Member's question by saying that his amendment contained nothing whatever about stamp duties. The institution stamp would be precisely the same as it would be if this amendment was not introduced. He could not say at this moment how such suits were valued, but he believed there was a fixed value for such suits.

THE ADVOCATE-GENERAL said that in a suit for proprietary right (which was a subject of more value than a mere tenant's interest), the stamp duty was calculated under the Act of 1862 on a value of three times, and under the Act of 1867 of ten times, the Government revenue. It was new to him to hear that in an ejectment suit the stamp was assessed on a valuation of twenty times the rental of the property. In an ejectment suit it was merely a question of the value of the interest of the ryot. He (the Advocate-General) was not able to say at this moment what the actual rule of valuation was; but, as the Hon'ble Mover of the amendment had said, the amendment was silent as to the question of stamp duty, which would be the same as before. Although in many cases it would be considerably more than eight annas, in many cases the stamp duty would amount to about that sum.

MR. MONEY said that the amendment was introduced to get over two difficulties; one the expenses attendant on the institution of a suit, and the other the delay that would be caused by the substitution of a regular action in the Civil Court, instead of the simpler and quicker form of procedure under the existing law. The present amendment seemed to secure the last of these two advantages: execution was taken out at once and the zemindar was put in possession sooner than under the ordinary procedure prescribed for the execution of decrees.

On the other hand, the amendment of the Hon'ble Member on his left (Baboo Issur Chunder Ghosal) secured the advantage of a low stamp, and did also secure a quicker mode of procedure. But a great objection to this amendment was that it introduced into a Bill, purposely passed with the object of making over all suits between landlords and tenants to the Civil Courts, the anomaly of keeping a large number of suits under the Collector and Commissioner, and it also retained the present disadvantage of a double series of suits on the same subject.

Of the two amendments he (Mr. Money) thought the amendment of the Hon'ble Member on his right (Mr. Dampier) which gave to the zemindar rapid execution of decree, met the chief requirements of the case. He (Mr. Money) regretted that it could not supply the desideratum of a cheap stamp duty also; but even with this want, he preferred it to the other amendment, and should, therefore, vote for it. As to the question of the amount of stamp duty in these cases, it was impossible at a moment's notice to say what it

would be: in many cases, it would be below the amount now obtaining, and in some above that amount; but in no case would the stamp rise to the same amount as in a suit for proprietary right before the Civil Court.

The Council then decided:—

AYES, 7.	NOES, 6.
Koomar Satyanund Ghosal.	Baboo Chunder Mohun Chatterjee.
Mr. Thompson.	Baboo Issur Chunder Ghosal.
Mr. Money.	Mr. Sutherland.
Mr. Dampier.	Mr. Alcock.
The Hon'ble Ashley Eden.	Baboo Peary Chand Mittra.
The Advocate-General.	Mr. Knowles.
The President.	

The motion was therefore carried.

THE ADVOCATE-GENERAL said that he had a notice of motion on the paper, the purport of which he had mentioned at the last Meeting, having for its object the omission from Section 68 of the last sentence. In introducing that sentence, which was inserted on an amendment of his own, he had the desire of carrying out, if possible, what appeared to be the view taken by the Native Members of the Council with regard to the desirability, if possible, of preventing the security, which the first provision of the Section gave by way of a lien on the crop or produce of the land, being of no avail. And the effect of the addition which the Council had adopted on his suggestion was that no sub-letting by an actual cultivator of the land would in any way deprive the person entitled to rent from that cultivator of his remedy by distraint, because he was to have the same remedy against the sub-lessee of that cultivator, unless in case of that sub-lease having been granted with the consent of the superior landlord. Giving that remedy by distress against the sub-lessee, it was necessary to secure to the person against whose crop the distress was levied the means of recouping himself from the person really in arrears, and who, and not the person whose crop had been distrained, was really in fault. At first sight it appeared to him (the Advocate-General) that this might have been effected by a Section he had on the paper, which would entitle the person whose crops had been distrained to set off the amount which he might have had to pay to get rid of the superior landlord's distress, from the rent which accrued due to the person whose default caused the distress. But on further consideration it appeared to him that that would afford but an imperfect remedy, because a case might frequently happen that an innocent cultivator, who had been obliged to pay up from the default of his immediate lessor, might not at any subsequent period continue to hold, and would have no opportunity of making a set-off; there might also be a great number of cases in which a zemindar might distrain for more than was really due from the ryot who had once been the cultivator, and under such circumstances of course, if, for the purpose of getting rid of the distress, the person in actual cultivation were to pay more than was due for rent actually due, he could not recover it by set-off or otherwise from the person in default, who would only be liable to repay the amount really due, so that this would leave the cultivator to the remedy of a regular suit against the zemindar or person who had carried out the distress.

Other cases of difficulty had also occurred to him, and he confessed that, on consideration (and he believed that the Hon'ble Members to whom he had spoken on the subject agreed with him), he thought that the Council should fall back on the general principle which had been adopted with regard to amendments on Act X of 1859, and make the least possible change in the existing substantive law. It should be remembered that this was something more than a question of procedure; it gave the landlord a more extended right of distraint and greater security for his rent than he had before, and it seemed in scope a little beyond settling the mere procedure of the Bill. In considering how this question was to be dealt with so as to secure due protection to the sub-lessee's interests, it seemed to him that the best course would be that the last clause of Section 68 should be abandoned. He therefore moved the omission of the following words at the end of Section 68:—

"Provided further that any cultivator of lend who may sub-let, shall, notwithstanding such sub-letting, continue to be regarded as the actual cultivator within the meaning of this Section, unless the person immediately entitled to receipt of rent from him shall by writing under his hand have consented to such sub-letting."

MR. MONEY said that he was the original Mover of the amendment with reference to Section 29 as it first came before the Council. He felt then that there was some force in the argument brought forward by the Hon'ble Members who represented the land-holding interest, that the sub-letting by the ryot deprived the zemindar of the right of distraint. The original Section went further than the remedy sought, and was on that account thrown out. He had then proposed an amendment, which was not carried; but a subsequent amendment much to the same effect was introduced on the motion of the learned Advocate-General. He (Mr. money) had since come to the same conclusion as the last speaker, that the principle contained in Section 29 of the Bill, as well as the principle of his and the Advocate-General's amendments, were a change in the substantive law, and he (Mr. Money) had also come to the conclusion that there would be many exceedingly great difficulties in carrying out a change of that kind. He therefore thought, with the learned Advocate-General, that they should make with regard to this point no change, but go back to the provisions of Act X of 1859, which allowed of distraint merely on the crop of the actual cultivator. This also was undoubtedly the intention of the framers of Act X of 1859.

BABOO ISSUR CHUNDER GHOSAL said that the addition to Section 68 had been made, as he believed, after mature consideration, and it was hard that the zemindars should labor under great difficulties in recovering their rents, when they were liable to be sold out if the Government revenue was not paid up by a particular day. The reason for the adoption of the amendment which it was now sought to strike out was that it was deemed that the landholders were under certain difficulties with regard to distraint, that it was thought proper to remove that difficulty, and consequently this amendment was carried. And now we were told that that was not the course we ought to have adopted. Of course the Council had power to alter a Section after it was passed, but he did not think it was a wise course to pursue, or that there were sufficient reasons for doing so on this occasion. He, for one, would oppose the motion.

MR. RIVERS THOMPSON said that the proviso added to Section 68 was passed subject to the condition that something further should be added to protect sub-lessees; and as the difficulty which the proviso was intended to meet was found to involve greater difficulties which, as the learned Advocate-General had fully explained, could not well be overcome, he thought the Council were justified in re-considering the matter. Unless the Hon'ble Member opposite (Baboo Issur Chunder Ghosal) could show some way by which we could get rid of those difficulties, and protect innocent sub-lessees from the consequence of a distraint of their crops, the Council had a right to omit altogether the proviso which was conditionally adopted, and regarding which the conditions could not be fulfilled.

THE ADVOCATE-GENERAL said that the Hon'ble Member who spoke last had anticipated pretty much what he (the Advocate-General) was going to say. When the Council introduced this addition to Section 68, he subsequently, having a printed notice of amendment for the purpose of protecting the actual cultivator, stated, if he remembered rightly, at more than one Meeting of the Council, or at least at one Meeting, that he did not propose at that Meeting or Meetings to bring forward the specific amendment of which he had given notice, because he felt a difficulty in the matter. And finally, at the last Meeting, he gave full notice of the course he had taken to-day; therefore there was ample time for Hon'ble Members, who regarded it as desirable to preserve the principle of Section 68, to come forward with some pro-

position on the subject. Finding that what he proposed would not meet the difficulty for which it was intended to provide, and gave rise to other difficulties, he moved that the matter that had given rise to all these difficulties be omitted from the Bill.

BABOO ISSUR CHUNDER GHOSAL said that Hon'ble Members would probably recollect what was the view of the Select Committee on this matter, and what the amendment in its original form was. In the present state of the law, zemindars had no check over their tenants sub-letting. It was an admitted fact that the unlimited creation of sub-tenures was an evil in the country, and it was therefore proposed to be enacted that cultivators should have no right to create sub-tenures without the consent of the zemindars. Hon'ble Members took exception to that amendment, and it was on the advice of the learned Advocate-General that that proposition was set aside, and the amendment which was eventually adopted was brought forward. Having given up the other amendment, we wished to adhere to what we had. The difficulties which were anticipated might or might not arise. If the learned Advocate-General, who was the author of the provision which it was now sought to omit, would consent to give us the Section as originally proposed, he (Baboo Issur Chunder Ghosal) would have no objection to offer to the motion now before the Council. The ryot should not be allowed to create sub-tenures without the consent of the person from whom he obtained his tenancy. If the provision which now stood at the end of Section 68 were omitted, the ryot would be at liberty to create sub-tenures without the consent of the zemindar, who would consequently not be in a position to exercise his right of distraint.

BABOO PEARY CHAND MITTRA said that he submitted that this was properly a question of order. The Section in question was fully discussed at former Meetings of the Council, and the addition, which was eventually made to Section 68 and now objected to, was originally recommended by the Select Committee. The Council had no notice of the present motion being brought forward, and even if they had, it was a question for the President to determine whether the Council could revise a Section already settled and passed; and therefore he (Baboo Peary Chand Mittra) submitted that the motion now made was not in order.

MR. MONEY explained that he was the Mover of the original amendment, which had not been accurately described by the Hon'ble Member on his left (Baboo Issur Chunder Ghosal). The amendment was that the power of distraint should remain with the zemindar in every case where, in giving a lease to a ryot, he inserted a clause providing that the power of sub-letting should not exist.

THE PRESIDENT said that, of course, it was always desirable to avoid going back to Sections which had already been settled by the Council. But there were many cases in which it was absolutely necessary to do so. In his opinion ample reasons had been given in the present case for going back to section 68. It seemed very clear that the Proviso, as it stands by itself, would very materially alter the substantive law, and on that ground alone he thought the question ought to be reconsidered.

The Council divided:—

AYES, 9.	NOES, 4.
Mr. Sutherland.	Baboo Chunder Mohun Chatterjee.
„ Alcock.	Baboo Issur Chunder Ghosal.
„ Knowles.	Koomar Sutyanund Ghosal.
„ Thompson.	Baboo Peary Chand Mittra.
„ Money.	
„ Dampier.	
The Hon'ble Ashley Eden.	
The Advocate-General.	
The President.	

The motion was therefore carried.

The postponed Section 108 was passed after a verbal amendmemt.

Schedules A, B, C, and D were agreed to, and the further consideration of the Bill was postponed.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL said that he begged to bring to the notice of

the Council that when the Select Committee on the Bill to consolidate and amend the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein, was appointed, which was done on the 12th of June last, the Committee was, according to rule, directed to report after the 16th of July. It was the general feeling of the Select Committee that they should be able to settle all the Clauses of the Bill during the course of the present week. As the matter stood, with the exception of the Clauses regarding Garden Sirdars, very little remained to be done; and as, under the Rules, a Committee cannot report till after the expiration of one month from the publication of the Bill, or within such earlier or later period as the Council might direct, he now proposed to move that the Committee should be directed to submit their report before Saturday the 10th instant, so that the Council may be able to proceed to the settlement of the Clauses of the Bill on Saturday the 17th.

The motion was agreed to.

The Council was adjourned to Saturday the 10th instant.

Saturday, 10th July, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland Esq.,
Koomar Satyanund Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA said that it would be in the recollection of the Council that, some time ago, he had the honor of introducing a Bill for the prevention of cruelty to animals, which subsequently became Act I. of 1869. By Section 8 of that Act, Section 67 of Act IV. of 1866 and Clause 16 of Section 40 of Act II. of 1866 of this Council were repealed, and the effect of that repeal had rendered Section 43 of Act II. of 1866, the Suburbun Police Act, and Section 72 of the Calcutta Police Act, inoperative. Those Sections were applicable to the offence of cruelty to animals as well as to other offences, and now, as the Sections indicating the offence of cruelty to animals had been taken out of the Calcutta Police Act as well as the Suburban Police Law, the Sections in question, which gave summary power to the Police to arrest without warrant, no longer applied to that offence, in consequence of which Act I. of 1869 had become, as it were, a dead letter. The omission did not occur to the Council at the time when Act I. of 1869 was passed, and now it was very necessary that the omission should be supplied, or, in other words, that the law, as it existed before, should be re-enacted.

With reference to this omission, the Society for the Prevention of Cruelty to Animals had addressed a letter to the Government of Bengal, of which he would read an extract. They said,—

"The great majority of the prosecutions continues to be in connection with cruelty in some shape to the innumerable draught bullocks, the largest class of sufferers, that labor in and about Calcutta. To obtain information from the drivers as to their residence, or the least assistance, or the chance of a witness amongst the bystanders, or to gain sight of the wounded animal again until its wounds were healed or *disguised*, and the chief evidence thus removed (a probability equally great in cases by summons returnable after seven or ten days), would be hopeless.

To obtain even sight of a Policeman as evidence, at the needful moment, or to follow the people into their villages (the majority probably living out of Calcutta), and there to obtain any needful information, or means towards conviction of an offender, is, it is felt from all past experience and knowledge of the element to be dealt with, nearly impracticable."

With a view to supply this omission, he begged to move for leave to bring in the Bill of which he had

given notice. It would be found that the same law not only existed here, and would have continued to exist but for the repeal of the Sections of the Calcutta and Suburban Police Acts referred to, but that this law existed as well in England. Under Section 13 of the English Act it was said, in the Report of the Royal Society for the Prevention of Cruelty to Animals for 1866, that the offender could be given into the custody of a Policeman or Constable, and it was added :—

"This is the best course to adopt within the metropolitan district and in towns where Magistrates sit daily, as the person charged can be conveyed to a Police Court immediately after the commission of the offence and punished forthwith. If a Policeman or Constable is not within reach when the cruelty is witnessed or cannot be obtained soon afterwards, it will be better to proceed by summons."

The same law existed in America, for there by Section 8 of the Act for the more effectual prevention of cruelty to animals, it was provided that :—

"Any Agent of the American Society for the Prevention of Cruelty to Animals, upon being designated thereto by the Sheriff of any county to this state, may within such county make arrests, and bring before any Court or Magistrate thereof having jurisdiction, offenders found violating the provisions of this Act, and all fines imposed and collected in any such county under the provisions of this Act, shall ensure to the said Society, in aid of the benevolent object for which it was incorporated."

Having shown that the Sections alluded to of the Calcutta and Suburban Police Acts, which gave summary power to arrest without warrant persons guilty of cruelty to animals, existed before the passing of Act I. of 1869, and that it was necessary that those provisions should be re-enacted, and further that this law not only existed here but in England and America, he begged to move for leave to bring in a Bill to enable Police Officers to arrest without warrant persons guilty of cruelty to animals.

The motion was agreed to.

STAMPS.

MR. MONEY said that since the introduction of the Bill to authorize the remission of penalties in respect of Deeds executed in Calcutta before the 1st October, 1860, and insufficiently stamped, certain points had come to light which up to that time he was not aware of. The Council of the Lieutenant-Governor of Bengal had, under Section 42 of the Indian Council's Act, power to repeal, alter, or amend any Laws and Regulations passed before the date of the passing of that Act. But it had no power to repeal, alter, or amend any Act passed subsequently to the coming into operation of the Indian Councils' Act. Now the Stamp Act of 1862 enacted that, in respect of Deeds executed before that Act came into force, the provisions of the Regulations in force at the time such Deeds were executed should be applicable in the same manner as if that Act had not been passed; that is to say, an Act of the Governor-General in Council, passed since the 1st February, 1862, has ruled that as regards Deeds executed before the 17th of April 1862, the date of the coming into operation of Act X. of 1862, the provisions of Regulation XII. of 1827 should have effect. *Ergo*, it followed that the Regulation of 1827 had practically, by the wording of the Act of 1862, come into the position of a Regulation passed subsequently to the passing of the Indian Councils' Act. It would appear therefore that this Council had really no power to alter or amend any part of that Regulation; and the Bill he had the honor to introduce was a Bill to amend that Regulation so far as regards the Section which gave power to the Revenue Authorities to remit or mitigate certain penalties.

But independently of this legal objection, it had also become apparent that the necessity for the Bill does not exist, and that parties wishing to secure registration of names on pottahs on the production of unstamped Deeds executed before 1860, can do so without the intervention of the Board of Revenue.

He therefore begged to withdraw the Bill.

RECOVERY OF WATER-RATES.

MR. MONEY, in the absence of Mr. Dampier, moved that the Report of the

Select Committee on the Bill to provide for the recovery of rates for water supplied for purposes of irrigation be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to, and the Bill was settled with a verbal alteration in Section 2.

The Council was adjourned to Saturday, the 17th instant.

Saturday, the 17th July, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General.*, The Hon'ble Ashley Eden, A. Money, Esq., C.B., A. R. Thompson, Esq., H. Knowles, Esq., Baboo Peary Chand Mittra, T. Alcock, Esq., H. H. Sutherland, Esq. Koomar Satyanund Ghosal, Baboo Issur Chunder Ghosal, and Baboo Chunder Mohun Chatterjee.

CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA, in moving that the Bill to enable Police Officers to arrest without warrant persons guilty of cruelty to animals, be read in Council, said that the Bill consisted of only three Sections, the first of which supplied the omission of the Act lately passed, and enabled Police Officers to arrest without warrant persons guilty of cruelty to animals; the second made the Act applicable to Calcutta and its Suburbs; and the third enabled the Lieutenant-Governor to extend the Act to such places as he might think fit. The Bill was so simple that it scarcely required explanation; he would therefore now move that it be read in Council.

The motion was agreed to, and the Bill read accordingly.

BABOO PEARY CHAND MITTRA then applied to the President to suspend the Rules to enable him to proceed with the Bill through its subsequent stages.

The President having declared the Rules suspended—

BABOO PEARY CHAND MITTRA moved that the Bill be taken into consideration in order to the settlement of the Clauses of the Bill.

The motion was agreed to, and the Bill settled without amendment.

The further consideration of the Bill was postponed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON said that the only Section in the Bill to amend the procedure in suits between landlords and tenants, which remained to be considered, had reference to the places in which, and the time when, the Act should take effect The consideration of these points had been in the hands of the Hon'ble Member who was absent from sickness (Mr. Dampier), and perhaps, therefore, under the circumstances, as the Council would probably be sitting for some weeks, the Council should postpone the consideration of these points to another opportunity.

The further consideration of the Bill was accordingly postponed.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL said he had to move that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the transport of laborers to the districts of Assam, Cachar, and Sylhet, and their employment therein, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. The Report was issued on the 10th instant, and had, therefore, been in the hands of Hon'ble Members some days. In moving that the clauses should be take into consideration he wished to detain the Council for a few minutes to make some remarks upon

the general character of the Bill as it now stood.

He believed most Hon'ble Members had received a paper emanating from a very respectable body, the British Indian Association, which contained various strictures on the Bill, but with regard to which he did not think it necessary to offer any observations, because it would be seen at once that the Association were dealing with the Bill as it was committed, and very many of the objections which they took to the Bill as it then stood had been removed by such alterations as had been made in the progress of the Bill in Committee.

But there were one or two portions of the Bill as now modified on which he wished to remark shortly, as they seemed to involve questions of principle.

It would be in the recollection of the Council that when the Bill was introduced the principal novelty which distinguished this Bill from that which had formed the subject of the Councils' deliberations in 1867 was the recognition of a system of private recruiting through the medium of persons whom the Bill called garden-sirdars. That was one, and he might say the principal point on which there had been discussion and differences of opinion amongst the Members of the Select Committee. It might not be out of place just to call the attention of the Council to the circumstances under which, according to his understanding, this proposal, which was embodied in the Bill introduced into Council with regard to private recruiting, first arose. In the Report of the Commission which sat last year, the question of private recruiting was dealt with, and he begged leave to refer to one or two paragraphs of the Report which bore on that question, as it was really the only important novelty in the Bill. The Commissioners said in their Report :—

"The scheme we would recommend is simply to open private recruiting under certain provisions which shall leave the planters almost untrammelled, and at the same time ensure complete information and sufficient control on the part of the Government."

Then the proposal of the Commissioners was that employers might, instead of using the agency of licensed recruiters, authorize by certificate the employment of their own garden sirdars to recruit, and that accordingly had been adopted in the Bill. Then they had proposed that, when a private recruiter or garden-sirdar had made up his party, he was to take them before the proper officer who was to register the names of the persons whom the sirdar had engaged; but the Commissioners were opposed to the notion that there should be any medical examination or enquiry as to the fitness to travel or labor in the gardens of the laborers with whom the garden sirdar made the engagement, not giving any particular reasons, but merely stating the conclusion, the grounds for which he (the Advocate-General) for one could not accept.

The Commissioners went on to say in their 91st paragraph :—

"On sanitary grounds, it is advisable that parties should be restricted, so that no single one shall number more than fifty. The more people travelling together, the more chance of sickness. Fifty persons are as many as one sirdar can properly look after, and we believe that, taking all things into consideration, it is the best limit that can be fixed."

Then they went on to propose that whenever these privately recruited laborers were to be conveyed to their place of destination by steamer or by boat, they should substantially be under the provisions of the Act. He need not trouble the Council by reading the particular proposal of the Commissioners.

Then in course of time, and after the report of the Commissioners had undergone the consideration of the Lieutenant-Governor and of the Government of India, this Bill was introduced, and it would be in the recollection of the Council that the Bill as it originally stood put garden sirdars in this position, that they themselves and the native inhabitants whom they engaged to proceed to the Districts in question, would not have been subject to any of the provisions of the Act, as regards the entering into of contracts and the explanation

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to the native inhabitants of the nature of the employment which they were about to undertake. But there was this limitation that, as the Bill originally stood, the exemption of private recruiters of the kind in question from complying with the provisions of the Act as regards the engagement of laborers, was only to apply to cases where the garden sirdar limited himself to the engagement of a party not exceeding 50 laborers, and the view which at any rate he thought he might say the majority of the Select Committee had taken (because, as might be seen from the form in which the Report had been signed there had been some latitude and difference of opinion reserved), was this, that it would be anomalous and opposed to one of the first and principal objects which the legislature had in view in dealing with this subject of coolie labor even in 1863, if private recruiters were allowed to convey parties so numerous as to consist of 50 persons, to Assam and Cachar, without being subjected to the provisions of the Act; and that it must be so (and he said so with all respect for the opinion of the Commissioners) seemed to him abundantly clear from this consideration. As the law at present stood, and as it stood in 1867, ten native inhabitants, and no more than ten, were permitted to proceed to the districts in question without being subjected to any medical examination, registration, or supervision whatever—might proceed as private persons seeking employment, subject to no legislative protection and no legislative restriction whatever. And in 1867 the question of the extension of the provision by which, under the existing law, parties consisting of no more than ten were left to act as they pleased, was very much considered as it had been since; and when this Bill was introduced this year into Council, it was proposed, according to the provisions in the Bill of 1867, that there should be an alteration in the existing law by which the provision should be extended to parties of twenty, instead of to parties of ten only. That amounted pretty much to the deliberate conclusion that a party of twenty laborers was as large a one as could safely be permitted to proceed as independent persons seeking employment in the districts in question; and he was quite at a loss to see what difference in point of protection there could be between a party of twenty laborers proceeding to those districts purely and entirely of their own accord without any inducement or invitation, and a party proceeding on the inducement or persuasion or quasi-engagement of a garden sirdar. If it was considered that persons of the classes who engaged in labor in the tea districts were so ignorant or so unadvised, or going to engage in labor so new, and in a climate so new, if not so unsuited, that it would not be prudent to allow more than twenty to proceed without being subjected from the first to legislative protection, how would the position of these, or of a larger party, and therefore he (the Advocate-General) presumed more liable to sickness, be improved by being accompanied by a garden sirdar, the garden sirdar being himself a coolie, who had once made the journey which he might be under the necessity of making with his party under very different circumstances, and who, with all respect to the conclusion of the Commissioners, would not be well able to judge whether the persons whom he engaged were physically fit to engage for the work. Therefore it seemed to the majority of the Select Committee that the proper course would be not to recognise the existence of a class of private recruiters who might take up so large a number as 50 laborers to these districts free from the provisions of the Act, but merely to carry out and supplement the provisions of Section 109 of the Bill, which generally exempted from its provisions parties not exceeding, as far as actual intending laborers were concerned, twenty in number.

He had made these observations because he wanted to point out clearly and exactly what the scope of the Bill was with regard to this subject of private recruiting. The Bill must be read (and this was not unimportant) strictly with reference to the leading feature thereof, namely, the definition of the term "laborer," and unless it was

so done confusion and misunderstanding was very likely to arise as to that was really the meaning of the Bill with regard to these private recruiters. The term "laborer" included any laborer, who at the time of the passing of this Bill might have been registered, that was to say, had entered into a contract before the Superintendent of Labor Transport, at Calcutta or elsewhere, and who had done so either under the provisions of the Act of 1863, or the Act of 1865, or the present Bill; but the Clause also went on to say that the term "laborer" was to extend to all persons engaged by a garden sirdar, so that, bearing in mind that interpretation, the effect of the Bill, as presented to the Council by the Select Committee, stood in this shape. If any native inhabitants engaged through the agency of a license contractor and recruiter, they would be engaged in the same manner as they were under the existing state of the law. Then there was the garden sirdar holding a certificate from his employer authorizing him to engage native inhabitants, and that garden sirdar, as the Bill now stood, would, if he engaged under his certificate a party of more than twenty laborers, become neither more nor less (with the technical and formal exception that he held a certificate and not a license) than a recruiter. He was to take his party of more than twenty for medical examination in the first instance; then before the Magistrate for preliminary explanation of the nature of the engagement and the registration of these parties; he was to take his whole batch to a contractor's depôt, and he was to see that the formal legal contract was fully explained and executed in the presence of the Superintendent of Labor Transport and he would be precisely in the same position, except as regards his license, as a recruiter.

That left the third class of cases, namely, the cases in which the garden sirdar was authorized not to engage more than twenty laborers. The Bill, following in that respect the 109th Clause with regard to parties not exceeding twenty proceeding to the districts without the intervention of a contractor, recruiter, or of a garden sirdar, did not, of course, require the form to be gone through of preliminary examination before the Magistrate or the execution of a formal contract. In such cases the Bill provided, as regards the contract, that it need not be formally entered into until the arrival of these small parties on the lands on which they were to be employed. But he (the Advocate-General) might point out that there were one or two provisions which it had been thought right by the Select Committee to extend even to garden sirdars whose power of enlistment or engagement was limited to parties of no more than twenty. Thus the 15th Section of the Bill required that the garden sirdar (whether authorized to engage more or less then twenty laborers) must present his certificate to the Magistrate in charge of the Sub-division or the District Magistrate in the locality where he was about to engage native inhabitants to labor, and his certificate was required to be countersigned. Then again the Bill provided in the 26th Section, as regards all garden sirdars, whether they engaged more or not more than twenty persons, that the garden sirdar was to accompany his party throughout, and was throughout the journey to provide the persons whom he had engaged with proper food and lodging. So that it came round to this. When a garden sirdar engaged more than twenty laborers he became a recruiter; when he engaged not more than twenty, he was something in the position of a contractor, and must provide them with sufficient food and lodging during transit to the Districts where they were to labor. Then again (and herein the Bill carried out substantially the recommendation of the Commission of 1868, and the Members of the Select Committee were entirely unanimous) when you take up native inhabitants, whether engaged through a recruiter or garden sirdar, in steamers or boats, the Bill provided that all the provisions laid down with regard to medical examination and the licensing of steamers and boats, and with regard to the boarding of vessels by Magistrates on the ascer-

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tainment of the existence of disease or death, were to apply to all laborers, no matter through what agency engaged, who were to proceed to the Districts in question.

The only other matter to which he would draw attention, and which he did, because it was not adverted to in the Report of the Select Committee, was this. Under the existing state of the law, that was under the Act of 1863 and the Act of 1865, a laborer, after he had completed his contract, or after his contract was concluded, was permitted to engage in a new contract to labor in the Districts in question, containing such provisions as regards the minimum amount of wages, the supply of rice, and matters of that kind, as contracts entered into in comformity with the provisions of the existing law. In 1867, when the Council were considering this question of coolie labor, it was thought proper expressly to authorise coolies, who had worked out their time or otherwise had become no longer subject to the provisions of the contracts into which they had originally entered, to contract on their own terms without being subject to any legislative protection or restriction whatever. It was supposed that, under the circumstances, the coolie, who had gone up to Assam or Cachar practically very ignorant as to the work or climate, and even the terms of his labor, would now, on the termination of his contract, be in a good position to take care of his own interests; and in consequence of that, in 1867, an alteration in the law was proposed, and at the time embodied in the Bill as introduced, by which, under the circumstances to which he had adverted, a time-expired laborer was left free to enter into any contract he pleased either under the Act, or on any other terms such as he and his would be employer might agree. But it had since been ascertained that an evasion of the existing law had been attempted by the coolies being induced to give up their contracts, either quite immediately, or almost immediately after their arrival at the scene of their labors, when they were just as ignorant as when they first arrived, and then to take from their employers engagements of a character (he did not say they were taken with any intention of unfairness or object of oppression but,) which would certainly deprive the coolie of protection at a time when he was not in point of knowledge capable of protecting his own interests. Therefore it had been thought better not to introduce the alteration of 1867, but to make the law a little more stringent by imposing substantial penalties for the infringement of the law by any employer who should induce time-expired laborers to enter into contracts other than under the provisions of the Act, that was to say, the coolie should have all the advantages of lodging, hospital accommodation, rice, maximum and minimum hours of labor, and the like, which he would have on his first arriving at the Districts.

He (the Advocate-General) had thought it desirable to make these observations, because he hoped that, to some extent, they would assist the Council in seeing what the position of the Bill now was as regards its scope and form, and thereby render the settlement of the clauses easier.

The motion was agreed to.

The consideration of Section 1 was postponed.

Section 2 provided a penalty for engaging a coolie to proceed to Assam, &c., otherwise than under the provisions of the Act.

BABOO ISSUR CHUNDER GHOSAL said that under the Penal Code the offence described in this Section would be kidnapping, and as this was an exceptional law, he did not see why we should depart from the Code of Penal law, and impose the trivial fine of Rs. 200 for the same offence. If the learned Advocate-General could show a sufficient reason for making this difference, he (Baboo Issur Chunder Ghosal) would be glad to withdraw his objection. The only reason, as he believed, for the retention of the Section, was that it was contained in the existing law, but as the Council were now amending the law, not only in particular respects, but as a whole, he thought the penalty provided in the

Penal Code for this offence should not be departed from.

THE ADVOCATE-GENERAL said that the objection taken by the Hon'ble Member was raised by the British Indian Association, but the answer to the objection, as he understood it, was that the offence contained in this second Section was not the offence of kidnapping as defined in the Penal Code. "Kidnapping" was defined in the Code to be of two kinds; first the conveying of a person beyond the limits of British India without the consent of that person, and secondly, the taking away of a minor without the consent of the guardian. Then the compelling by force or inducing by deceitful means a person to go from any place, was abduction, and it could not be said that laborers taken otherwise than under the provisions of this Act, were of necessity taken by force or taken by deceitful means. The offences to which he had referred had nothing to do with the offence described in Section 2 of this Bill. This Bill provided that particular persons only should engage laborers to proceed to the tea districts. The Section was therefore absolutely necessary.

The Section was then agreed to, and so also was Section 3.

Section 4 provided the penalty of imprisonment for any person not licensed as a contractor, recruiter, or garden sirdar, engaging or contracting to supply laborers.

On the motion of MR. KNOWLES, the words "fine or" were inserted before the word "imprisonment;" and the Section was then agreed to.

Sections 5 to 10 were agreed to.

Section 11 related to the engagement of laborers through a garden sirdar.

BABOO ISSUR CHUNDER GHOSAL said that by this Section a new class of recruiters was brought in. The Section did not mention the number of garden sirdars which each planter would be allowed to employ during a season, or at any one time. The number of coolies which a garden sirdar had been allowed to engage, independently of the provisions of this Act, was restricted to 20 with their families and relatives. We all know that laborers generally resorted to Assam from the western districts, who, as a rule, were polygamous, and we also know the meaning the term "relatives" bore in this country in contradistinction to the European notion of that word. Under this Section, if a planter or employer were allowed to entertain half a dozen garden sirdars, he would be allowed to import 6 times 20 coolies, including two adult wives to each coolie, besides relatives, of which amongst the natives the number was infinite. He would, therefore, beg to suggest to the Council that the number of garden sirdars under each employer for one season or time, should be defined by law. Otherwise employers might through their garden sirdars get laborers without limit and beyond the control of the Government, and thus frustrate the primary object of the law. He thought that measures should be taken to guard against such an undesirable state of things. He, for one, should say that each employer should not be allowed to engage more than one garden sirdar for recruiting during the season; but whatever the number should be, it ought to be defined by the Bill.

MR. KNOWLES said that some employers had a thousand acres under their charge consisting of 8 or 10 gardens, and in each there were 80 to 100 coolies. Would the Hon'ble Member put such an employer on the same footing as an employer who had only 50 to 100 acres?

BABOO ISSUR CHUNDER GHOSAL said that there could be but one employer for each garden. The suggestion which he (Baboo Issur Chunder Ghosal) had made might, however, be modified. If recruiting by one garden sirdar would not meet the exigencies of the case, the employer could engage the services of a contractor. The proposition first came up in this shape, that fifty coolies should be the maximum number that a garden sirdar might be empowered to take up without the intervention of a contractor; that number was, however, with the consent of the Hon'ble Member who spoke last, reduced to

twenty. The objections now taken evidently required discussion.

MR. SUTHERLAND said he thought that the Hon'ble Member had overlooked the fact that the recruiting for a garden was limited to its requirements, and on the ground of expense alone a planter would not send out an unlimited number of sirdars. The Hon'ble Member had referred to the other alternative of recruiting by means of contractors, and that system would no doubt be still largely employed; but he should remember that the proposal for recruiting by garden sirdars met with favor and support on the ground that it gave the chance of furnishing a better class of laborers at a less expenditure, and he (Mr. Sutherland) could see no reason for making the proposed restriction.

THE HON'BLE ASHLEY EDEN said that there were two different forms under which garden sirdars could recruit. The first form was that in which a garden sirdar could take an unlimited number of laborers, and in which case he would be liable to all the restrictions of the Act. And with regard to this there was no reason why the number of such garden sirdars should be limited, for from the first to the last he was, in the recruiting district, on the road, and in the depôt, and with regard to the execution of contracts and the conveyance of the coolies, under precisely the same restrictions as a contractor's recruiter. But in the case of small bodies of twenty men there were no such restrictions, and no safeguards against abuse of the worst description, and he (Mr. Eden) must say that he thought there was some merit in the proposition of the Hon'ble Member on his left (Baboo Issur Chunder Ghosal). We certainly ought to provide against the intentions of the legislature being frustrated by the combining together of two or more garden sirdars. It was not the intention of the Select Committee that four or five garden sirdars should be sent down to recruit in small parties, and then join together on the road; and, therefore, he thought the Section under discussion required some modification restricting the working of the provision under which garden sirdars recruited such parties.

MR. SUTHERLAND said that the proposed amendment would limit the Assam Company, for instance, who had an outturn of 12,000 mds., to the employment of one garden sirdar. If that was the intention of the Council, it would practically put the Assam Company in the same position as the proprietor of 50 acres of tea cultivation, in regard to recruiting under these Sections.

THE HON'BLE ASHLEY EDEN replied tat the Section was not meant to afford an opening for planters to get up large numbers of coolies in small batches of twenty, in a manner which would enable them to evade practically all the provisions of the Act. The Committee had never intended that this power should be used as a means of supplying large gardens. It was merely meant to meet the case of sirdars visiting their villages and wishing to bring their friends and fellow villagers back with them. Large gardens, such as those alluded to by the Hon'ble Member, would never have recourse to recruiting in small parties of twenty, unless they did it purposely to evade the restrictions which the legislature had thought it necessary to impose on the transport of laborers. Gardens such as those alluded to, wanting a number of laborers, would naturally employ sirdars having a certificate to recruit more than twenty laborers.

THE ADVOCATE-GENERAL said that he agreed with the Hon'ble Member opposite (Mr. Eden) that in the case which was referred to by the Hon'ble Member on the right (Mr. Sutherland), of large concerns in which there was only one employer in charge of the gardens, but in which there were separate garden sirdars, the employer would be acting with a sufficient sense of his own interests by deputing only one person and authorising him to bring up in one batch as many laborers as were wanted, in which case such person would come under the provisions relating to licensed recruiters, and the question before the Council would not arise. At the same time he (the Advocate-General) should not, for a moment, wish it to be supposed

that he was opposed to any amendment which would not be an evasion of the objects of the Act. It seemed to him that the evil contemplated by the Hon'ble Member who had raised this discussion, was an amalgamation of garden sirdars' parties, each individual party not consisting of more than twenty laborers. If in two or three separate districts, the same employer, through two or three separate garden sirdars, recruited no more than twenty laborers out of each district, forming separate parties, he (the Advocate-General) did not see why that should not be allowed. The evil provided for would be the subsequent amalgamation of these parties, when, although there would be three garden sirdars accompanying them, the danger from sickness and other results of the conveyance of such large parties would not be mitigated by the presence of two or three garden sirdars, nor would the presence of two or three garden sirdars be more preservative of the health and comfort of the laborers than the presence of one. Therefore he thought that the better amendment would be to introduce a separate Clause to guard against the evil apprehended, and he would suggest to the Hon'ble Member that this question should be separately dealt with. It would be better dealt with by a substantive motion, than by restricting employers to the giving of certificates to no more than one garden sirdar in the season. As he (the Advocate-General) had said before, he did not wish it for a moment to be supposed that he was opposed to any legislative provision which would have the effect of preventing the formation of large parties by the joining together of separate garden sirdars.

BABOO ISSUR CHUNDER GHOSAL said that it was evident that the Hon'ble Members who had taken part in the discussion had misapprehended his meaning. What he meant to say was that, in the case where a garden sirdar was empowered to engage *not more* than twenty laborers, the number of such garden sirdars should be restricted *to one to each garden.* But where an employer wanted more than twenty laborers for a particular garden, and at the same time wished to have them through a garden sirdar instead of a contractor, he could easily do so under the provisions of the Bill by mentioning the number he required in the certificate of the garden sirdar, who in that case would necessarily be placed in the position of a licensed recruiter and come under the general control and supervision of the Superintendent of Labor Transport as provided for in Section 14 of the Bill. He (Baboo Issur Chunder Ghosal) could not believe that it could be the intention of the Government or of the Council to let loose an unlimited number of garden sirdars from each garden, each sirdar being invested with the power to engage twenty laborers with their two wives a piece and children and relatives in proportion, in whatever part of the country any one, or all of them thought proper to operate irrespective of the question of subsequent amalgamation. Such a proceeding would certainly bring about the *bouleversement* of the present system of engaging laborers, and be a means of evading the law, and the result would be in the first place that the fees that were heretofore received in the Superintendent's Office, and which went to find his establishment, would be lost to Government, and in the second place Government would at once lose all control over the first stage of labor transport as provided for in this Bill. Besides, it was certain that Government would have to give compensation to a large amount to the contractors, who would lose all the capital they had laid out to meet the requirements of the law as it existed at present. For, naturally this system of recruiting, under garden sirdars, would at once knock on the head the system in vogue under the contractors. He (Baboo Issur Chunder Ghosal) had, however, no objection to the proposal that the Section should stand over; but he would beg the Council to reserve the entire question of garden sirdars for separate discussion.

The consideration of Sections 11, 12, and 13 was then postponed.

Sections 14, 15, and 16 were agreed to.

The Advocate-General.

Section 17 provided that the Magistrate of the District or Sub-division should have the powers of a Superintendent over the accommodation provided for laborers in such District or Sub-division.

BABOO ISSUR CHUNDER GHOSAL said, that by Section 33, thirty days was provided as the number of days a laborer might be required to remain at a sudder depôt before entering into a contract; but as regards mofussil depôts, he observed that the number of days during which a laborer might be required to remain before he was sent to a contractor's depôt, was not specified. He remembered a case in which coolies were kept such a length of time in a Mofussil depôt, that small-pox broke out, and several deaths occurred, because the Magistrate had no power under the law to interfere.

THE PRESIDENT said that in the case referred to the Magistrate of the District was to blame for allowing over-crowding in the depôt.

THE HON'BLE ASHLEY EDEN said that he thought there should be a separate Section providing for the matter referred to. It was not right that coolies should be detained indefinitely in these mofussil depôts, waiting till it suited the convenience of the recruiter to despatch them. All this time they drew no pay, and if they left and went home, they lost a good deal of time, and were disappointed in the prospects of emigration.

THE PRESIDENT said that he could not see the necessity for any provision of the kind: the coolies were perfectly free Agents until they had actually entered into the contract.

MR. KNOWLES said that from his own experience he knew that the coolies did go away from the mofussil depôts if kept beyond a certain time.

BABOO PEARY CHAND MITTRA said that he was anxious to know whether the Magistrates had made any suggestions or had referred any papers on this subject. As to coolies being kept for a long time in the mofussil depôts, he could confirm the statements that had been made. He knew of one case in which the coolies who had been collected, left because the Magistrate did not pass an order that they should be taken down.

MR. SUTHERLAND said that he would oppose any amendment to the effect suggested, on the ground that it was unnecessary. He thought that the Hon'ble Member had drawn a highly colored picture of the state of things as they were six or seven years ago when recruiting was under no legislative restrictions. The state of things as they now existed was very different indeed.

The Section was then agreed to.

Section 18 provided that laborers recruited in the mofussil should appear before a Medical Officer for examination.

BABOO ISSUR CHUNDER GHOSAL said, he thought that in line 11 the words "if any", after the words "Medical Officer," were scarcely of any use, because under Section 19 a medical certificate must be produced when a laborer was brought to the Magistrate for registration: so that the use of the words "if any" made the Section somewhat confused. He (Baboo Issur Chunder Ghosal) also objected to the fee of two annas prescribed for the medical examination of each laborer, which he thought should not be imposed on the coolies. This charge, as well as the rate of one rupee per coolie provided for in a subsequent portion of the Bill, would fall heavily on employers. Government was both directly as well as indirectly benefited by tea cultivation, and it was to the interest of Government that the planter should not be under any sort of money pressure. He would also bring to notice that no provision had been made for the protection of the poor relatives who would accompany the laborers: supposing any of such relatives were found too weak to travel, and the laborer persisted in taking them, there was nothing in the law to prevent his doing so. The consideration of this Bill, in consequence of the hurried way in

which it had been proceeded with, had been scarcely fair and commensurate with the importance of the subject, and he must say that some of the Sections had not been drawn up on just principles of legislation. This was an exceptional measure, and therefore greater care should he taken in the settlement of the Bill. These laborers were to go with their relatives to a distant country unknown to them; and if the coolies were unfit to undertake the journey, they were rejected after examination, but no provision was made for the examination of those relatives who might accompany the laborers. It was a question of humanity which he wished to bring to the notice of the President.

MR. MONEY said, he felt a difficulty in voting upon any of these Sections regarding garden sirdars, as long as the amendment which had been postponed was undisposed of. Until it was settled whether a planter was to be limited to the use of one sirdar or not, it seemed inconsistent to pass these Sections. He thought it would be best that the question as to an employer being allowed to send only one garden sirdar to recruit during the whole season, should first be settled; for the whole question of garden sirdars hinged upon that. If he (Mr. Money) came to the conclusion that it was undesirable to permit the employment by any one planter of more than one garden sirdar during the season, he could only come to that conclusion on the ground that the employment of garden sirdars was mischievous; and if he came to that conclusion, he should certainly go on and advocate the abandonment of the permission to employ garden sirdars at all. As long as the question of the employment of one or more garden sirdars was still under consideration, he did not see how the Council could proceed to the settlement of the other clauses relating to garden sirdars.

THE ADVOCATE-GENERAL said, that his understanding of what had been agreed to was entirely different. It seemed somewhat irregular to him that the Hon'ble Member should now ask that the consideration of all those Sections which had reference to the question of garden sirdars should be postponed. It was suggested that the effect of what had taken place on a previous Section was that the whole question of garden sirdars should be postponed. There had also been made certain suggestions as to the Bill having been proceeded with in a hurried manner. But he would beg to remind the Council that the Bill had been introduced on the 5th of June, and was read in Council and referred to a Select Committee on the 12th. If the Hon'ble Member opposite had not attended the meetings of the Committee, it was a misfortune; but he believed there was a subsequent meeting which the Hon'ble Member did attend, and it was at that meeting that the question as to garden sirdars was adjusted. The questions that were raised by way of amendment or suggestion on an earlier Section could not have any thing to do with Section 18, which was now before the Council.

Then, with regard to the special proposals made as to this section, the first amendment was the omission of the words "if any." The reason for the insertion of those words was simply this. The Section stated that the native inhabitant was to be brought before a Medical Officer for examination. That, coupled with the last sentence of Section 19, which empowered the Magistrate to dispense with the production of a medical certificate, would have raised ambiguity in the case where the Lieutenant-Governor of Bengal had not, under Section 18, appointed a Medical Officer for the examination of coolies. The words "if any" were inserted, because it was contemplated that it might not be convenient that a Medical Officer should always be appointed, and therefore the insertion of those words showed that, in such a case, the requirements of Section 18 need not be followed.

BABOO ISSUR CHUNDER GHOSAL said, that with regard to his absence from one of the meetings of the Select Committee, he begged to observe that, as far as he was aware, there were only three

meetings held of the Committee; the first of which was on a close native holiday when he had another previous engagement and could not attend; at the second meeting, the majority of the Committee agreed to place garden sirdars under all the restrictions imposed on recruiters under contractors, giving to them at the same time the power to engage laborers up to fifty; and on the third day, the number of laborers, which a garden sirdar should be allowed to recruit without any interference, was reduced to twenty.

THE PRESIDENT said that before putting the specific amendment to the Council, he wished to say a few words on the general question. It was suggested that the whole question of the employment of garden sirdars must be reserved, because it had not yet been determined whether an employer was to be permitted to depute one or more garden sirdars during a season. To a certain extent that was correct, but only to the extent where the garden sirdar was authorized to recruit less than 20. Where a garden sirdar engaged more than 20 laborers, he was in all respects substantially a recruiter, and the Sections now being discussed related to him only, and not to the garden sirdar recruiting less than 20 men.

BABOO ISSUR CHUNDER GHOSAL'S motion to omit the words "if any" was then put, and negatived.

BABOO ISSUR CHUNDER GHOSAL moved the omission in the same Section of the words, in lines 20 and 21, "on payment of a fee not exceeding two annas for each native inhabitant."

MR. SUTHERLAND said that when this question came up in Select Committee, he objected to the fee, but he ultimately agreed, seeing that the amount was so small that it would not prove a heavy tax on the planter, and that it would insure examination at once.

BABOO PEARY CHAND MITTRA said that if he was not mistaken, this fee would come ultimately from the employer, in the same manner as the fee of one rupee per head in another portion of the Bill.

THE PRESIDENT said that the fee was very small, and the provision was, in his opinion, a wise one.

THE HON'BLE ASHLEY EDEN said that he should explain that this Section had been introduced in consequence of a difficulty which had actually arisen. On one occasion, a Medical Officer refused to examine laborers unless a certain fee was paid: the planter complained, and no doubt with some reason, that the demand made was excessive; and consequently this fee was fixed which, in the case of a large number of laborers, would afford a reasonable amount of remuneration. He thought that it was only fair that the Medical Officer should receive sufficient remuneration for the extra duty he was to perform.

THE ADVOCATE-GENERAL said that the notion of the fee of two annas had undoubtedly arisen from the circumstance stated by the Hon'ble Member who spoke last; but the notion that this fee would fall on the coolie was perfectly groundless. By this Section, the recruiter or garden sirdar was required to do something which he was to do to secure his man.

The motion was then put and negatived, and the Section agreed to.

The further consideration of the Bill was postponed.

The Council was adjourned to Saturday, the 24th instant.

Saturday, 24th July, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq., C. B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
H. H. Sutherland Esq.,
Koomar Satyanund Ghosal,
and
Baboo Chunder Mohun Chatterjee.

COURT OF WARDS.

MR. MONEY moved for leave to bring in a Bill to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal. He said that some inconvenience had been found to result on various occasions on account of the defective state of the law relating to the Court of Wards and from certain restrictions which it imposed. The law at present was defective in regard to the power to sell or mortgage any portion of a ward's landed property for the purpose of paying off debts due by the estate, with regard to the assuming charge of shares in joint undivided estates and of tenures not paying revenue direct to Government, and with regard to the mode of managing the property of wards situated in more than one district. The executive is also hampered by the present restriction of the amount of allowance for a ward's support, which is limited to ten per cent. of the Government revenue, and also by the restrictions as to the nature of the securities in which the surplus proceeds of a ward's estate might be invested.

The object of this Bill was to remove these restrictions, and to remedy these defects. Advantage had at the same time been taken to consolidate into one law all the various laws which at present regulated the management of the estates of wards and of the persons of the wards themselves.

The motion was agreed to.

IMPROVEMENT OF THE PORT OF CALCUTTA.

THE HON'BLE ASHLEY EDEN moved for leave to bring in a Bill better to provide for the improvement of the Port of Calcutta. He said that the Bill which he proposed to introduce was merely a provisional Bill, pending the preparation of a more complete measure in the ensuing cold season. In 1866 the Council passed a Bill for carrying out improvements in the Port of Calcutta. As that Bill was passed in 1866, it was only due to those Members who were then in Council and who still continued Members of the Council, to explain the circumstances under which it had become necessary to undo what they had so lately done. As regards the only two Members who were still Members of the Council, namely, the learned Advocate-General and himself, the explanation was simple, for the Act to which he had referred, Act X of 1866, was passed in opposition to the views of the Advocate-General and himself, and they both at the time expressed a strong opinion that the Act could not be worked. In referring back to the Proceedings of the Council, it appeared clear that the Bill was avowedly a tentative one; and there was so much difference of opinion as to the way in which the Act would work, that he would read to the Council certain passages from the Proceedings to show the opinions which had been entertained on the subject.

The Bill was distinctly stated by the Advocate-General to be a tentative measure. When the Bill was introduced, the Advocate-General said:—

"The Bill which he proposed to introduce ought to be considered as a tentative measure."

And when the question came before the Council on the motion for the reading of the Bill, great difference of opinion was expressed as to the constitution of the Trust by which the work should be carried out. The Advocate-General then said:—

"His own feeling was very much that the proposed Bill should be regarded as merely a tentative measure, a foundation for the Select Committee to work upon."

And He (Mr. Eden) said:—

"With regard to the question of Agency he thought that, as the proposition now stood, it was open to the objection that it would make the Chairman of the Justices the servant of two bodies. His own opinion was that the works would be best executed under the supervision of the Government in its executive capacity, by means of a special officer, solely responsible for the administration of the port and landing wharf, rather than by twelve or fourteen men, who would each have their own particular views as to the manner in which the fund should be administered; but he thought that, if it was to be made over to any body of men, the Justices were the proper body to have charge of the wharf."

THE President of the Council concurred in those views; but said that, for certain reasons connected with the raising of money, he thought it would be impossible to carry out those views.

THE Advocate-General then said:—

"For his own part he was very strongly inclined to concur with the Hon'ble Member opposite (Mr. Eden), that the construction of the work should be undertaken by Government through the agency of a single responsible officer; and he thought, if the matter were fairly considered, the difficulty set forth might be got over, for it might be found that the application of a system of raising money on debentures would not be inconsistent with Government agency. Such a system had been adopted in England with regard to Crown lands, and he did not see why it should not be made applicable here. He merely mentioned this matter to guard against its being considered that the question of agency had been settled."

And again the Advocate-General, on a subsequent date, said that in signing the Report of the Select Committee he, as well as Mr. Eden who was then absent, did not agree as to the propriety of the Municipality being constituted the trust for the improvement of the Port. The Advocate-General observed that—

"There was only one question of principle in respect to the change made in the form of the Bill, namely, the alteration in the machinery provided for the working of the Act, namely, the vesting of all the property and rights and powers of raising tolls in the Municipality of Calcutta, instead of vesting those powers in a selected body of trustees of a different constitution. The Council would observe that the Report of the Select Committee did not express the unanimous opinion of the Committee, two of the Members connected with the mercantile interest having signed it under special protest and exception. In signing the Report, he, as well as an Hon'ble Member now absent (the Secretary to Government), did not agree with the majority of the Committee as to the propriety of the Municipality of Calcutta being adopted as the machinery for the working of the Bill. It might not be out of place for him to shortly recapitulate what were the objections which occurred to his mind as to the course which had been adopted by the Committee. He would quite admit that it might be said with some degree of truth, that the paramount object which they ought to have before them, was that some Act should be passed for improving the Port, and that being done, it was a matter of comparatively minor importance as to the means by which those improvements should be carried out, and he would go even further than that opinion, if he thought he was dealing with a question of detail, however important, because it might be corrected by future legislation, with regard to which the Council would be in a better position of exercising its power from its past experience of the working of the Act; but it was because he thought the question really involved a question of principle, the results of which might be of a character which could not be justified either as regarded the real interests of the public or the rights of the Municipality, that he thought it proper *in limine* to object to the proposed alteration."

But in support of the scheme then adopted there was a very strong majority, and the Council was still further split up by the two Members of the Council who represented the mercantile interest, declining to accept either view, and advocating a separate trust composed partly of merchants and partly of officials. Mr. Peterson, who was then a Member of the Council, and who had been a very strong advocate of the Municipal claim, himself admitted that he was in favor of placing the working of the Port in the hands of a responsible officer of Government. He said:—

"He wished also to correct the learned Advocate-General on one point. His impression was not the same as the Advocate-General's with regard to the opinion of the Hon'ble Member who was absent (Mr. Eden). He believed that that gentleman advocated the appointment of one responsible officer under Government; and if there was permanency in that one responsible officer, he should be more inclined to listen to that proposition than the present or the former proposal."

But in spite of that, Mr. Peterson did vote for the proposal to place the trust in the hands of the Municipality. The Bill was then passed; and after fourteen months it was found, as had been anticipated, that the Bill would not work; and the first question that arose was a proposal to enable the Committee of the Justices to borrow money in small sums for particular works—a course which was neither authorized nor contemplated by the Act. This Council then passed a Bill in 1867 to enable the Justices to borrow a certain sum of money to carry out certain works, but the Bill was vetoed by the Governor-General on the ground that the liabilities incurred by the Municipal Corporation were already so great, that the result would be that the Government would eventually become responsible for any sums of money borrowed for the improvement of the Port under the proposed law. Therefore he (Mr. Eden) thought that he had shown that the learned Advocate-General and himself were justified in the course they had taken in 1866; and notwithstanding any thing that had been said on the other side, he felt satisfied that their view was the correct one, and that a mixed Trust, however composed, was not applicable to the state of the country, where mercantile men were all fully employed in looking after their own business, and could not take any really efficient part in the conduct of the business of Boards and Trusts, which would be much better managed by men specially paid for the duties, and kept to their duty by the direct criticism of the public.

One of the Members of the Council—a gentleman whose opinion was justly entitled to very great weight (Mr. Skinner)—when the Act of 1866 was under discussion, had said that he was fully satisfied that the proper course was to form a mixed Trust composed of merchants and shipowners, tradesmen, and persons nominated by the Government. But he had since, from experience, seen reason to change his opinion. In a letter to the Chairman of the Committee of Justices for the improvement of the Port written fifteen months after the passing of the Act, Mr. Skinner said:—

"I find, on my return to Calcutta, that the River Trust Committee have, at the invitation of Government, resolved to abdicate their functions in its favor.

The labor of 15 months has had finally to yield to the obstructiveness of an Act which no efforts could, in its present form, reduce to a practicable measure. The principle of the Act, denounced on its introduction by that portion of the public most nearly concerned in its operation, has been proved to be wrong: the application of its provisions has, on all important points, been found impracticable; and the Government, apprehensive of its obligation under the Act, has withheld all assistance, because unarmed with sufficient powers over its administration. By the Government and the public alike the measure has now been condemned."

"The point now to be considered is the nature and constitution of the agency to which the works in view shall be entrusted.

The great importance of the undertaking not only to the city but to the country generally at once removes the question from the sphere of commercial speculation, and the suggestions that have been made as to the propriety of entrusting the works to private enterprise need not be seriously discussed.

The notion, too, of committing the management of such operations to an unpaid and independent body of Trustees must also, it seems to me, be discarded, because, unlike the communities of large towns at home, the European population at Calcutta is wanting in that useful class of those who, being permanently resident, have an abiding interest in projects of this sort, and the time at their disposal for the sustained performance of the duties they require. Even when, as in the case of the Calcutta Municipality, an organization exists to carry on popular public duties, in the conduct of which each individual Member is personally concerned, it is found that practically the work falls almost entirely on the paid officials.

The reasons for combining the Municipality and the River Trust were never to me very apparent: and the evil of the connection has been shown in another way, besides that of adding to the already onerous occupations of the Municipal Chairman, a clear conflict of interests having arisen on a matter in which the question of their identity could best have been tried, *viz.*, the provision of funds for carrying out the river operations. Only one test more practical could be applied completely to demonstrate the separation between Municipal and Port interests, and that would be by raising funds for Port operations by means of Municipal taxation. But

The Hon'ble Ashley Eden.

it is to be hoped that the Municipal principle has now been abandoned.

In whatever sense may be construed, with respect to other projects, the remark which has often been made that public questions in this country are apt to flag unless taken up in some form or other by the Government, it involves no reproach to the Indian public, any greater, at all events, than is implied in the aid afforded to the Railways, that it should be necessary for Government to connect itself similarly with the construction of the Port improvements; and both enterprises being in their results beneficial to the country at large, the latter has all the more reasonable claim to assistance from the State that it starts without any capital to meet an immediate large outlay, and that its object affects no private vested interests. Indeed, if the works are to be carried out earnestly and vigorously, I see nothing for it but that the Government should itself undertake them; for, as is remarked in the letter from the Government of India to the Government of Bengal, dated 17th July, 1867, an independent Trust, it matters not whether it be constituted according to the provisions of Act X of 1866, or otherwise, has no available income until its works are in operation, nor the means, till then, of raising, on such security as it could offer, any income at all adequate to its requirements.

In any new organisation it would certainly, I think, be advisable, and Government would probably also wish it, that, for consultative purposes, representatives of the Mercantile and Shipping interests should be retained; but the executive duties should be vested entirely in the Government, though it would be desirable that a separate Board be created distinct from the ordinary Public Works Department."

What the Council had to do now was to pass a provisional Bill to enable the works to go on. The works were now being carried on by the Government; but it was requisite to give the Government all the powers conferred by the Act of 1866 on the Committee of the Justices, to enable the Government to proceed with the construction of jetties by means of its own officers, as a temporary measure. The question of a permanent Trust would be brought before the Council in the course of the year, and it would then be for the Council to consider how they could best constitute a working body.

The Bill was a short one. It merely said that the existing Act had proved inoperative, and then proceeded to vest the property, now held in trust by the Justices, in the Secretary of State for India in Council, and gave to the Lieutenant-Governor the necessary powers for carrying on works for the improvement of the Port.

The motion was agreed to.

CRUELTY TO ANIMALS.

BABOO PEARY CHAND MITTRA moved that the Bill to enable Police Officers to arrest without warrant persons guilty of cruelty to animals be passed.

The motion was agreed to, and the Bill passed.

RECOVERY OF WATER RATES.

MR. MONEY said that since the Bill to provide for the recovery of rates for water supplied for purposes of irrigation last came before the Council, it had been thought advisable, with regard to Section 5, to enlarge the powers given to the Lieutenant-Governor to enable him to make rules on other subjects than those mentioned in the original Section. One of those subjects was the use of water obtained surreptitiously, another the management and regulation of the works connected with irrigation, namely, works for irrigation proper, works for navigable canals, and works for drainage; and a third the regulation and realisation of tolls to be levied on the navigable canals. It appeared to him, however, that the first portion of the amendment relating to the surreptitious use of water might be left out. In the original Act, with regard to the abstraction of water, Section 12 provided for dealing with such offences penally, and Section 14 provided for the levy of double rates where water was used without a previous agreement; the only object for which the first part of the amendment could provide would, therefore, be to enable the Lieutenant-Governor to impose a rate higher than the rate decreed by Section 14. That seemed however unnecessary, especially as the Bill was only of a temporary character. He

would, therefore, move the following amendments in Section 5:—

After the word "made" in line 8, the insertion of the words "respecting the management and regulation of all works connected with irrigation, respecting tolls to be levied on the navigable irrigation canals."

After the word "superintend" in line 9, the insertion of the words "the irrigation works."

And the substitution of the word "the" for the word "such" in line 10.

The motions were severally agreed to, and the Bill was then passed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the procedure in suits between Landlords and Tenants, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

MR. RIVERS THOMPSON said that the only Section for which the consideration of this Bill had been postponed was Section 106. As originally drafted, it had been intended to extend the Bill to all places in the Bengal Provinces in which the Permanent Settlement prevailed. It was objected that in portions of the Chota Nagpore Division there were places to which the Bill would thus be made applicable, while others would remain under the old procedure for rent suits. It was not desirable to have this diversity of practice in one and the same division, and for this and other reasons, it was deemed advisable to adopt a general form of Section in lieu of the Section as it stood, and he, therefore, begged to move the omission of Sections 106 and 107, and the substitution of the following:—

"This Act shall take effect in those districts in the provinces subject to the Lieutenant-Governor of Bengal, to which the said Lieutenant-Governor shall extend it by an order published in the *Calcutta Gazette*, and thereupon this Act shall commence and take effect in the districts named in such order at the day and time which shall be in such order provided for the commencement thereof."

This would leave it discretionary with he Government to extend the Bill to such districts as it thought fit.

MR. SUTHERLAND said, he would ask the Hon'ble Member if the proposed Section would make the Bill applicable both to the permanently settled districts as well as to the other districts referred to in Section 107. The proposed Section (as he understood it) embraced both descriptions of districts. He would, therefore, ask whether the Section would authorize the extension of the Act into the Districts of Assam and Cachar.

MR. RIVERS THOMPSON said it would certainly be in the discretion of the Lieutenant-Governor of Bengal to do so. The introduction of the proposed Section would necessitate the omission of both the Sections to which he had referred.

MR. SUTHERLAND said, he should be sorry to say anything with a view to limit the authority of His Honor the Lieutenant-Governor; but he thought it was not advisable now to provide for the extension of the Act to such districts as Assam and Cachar. In future years, when the matter came up, it might be asked why were not those districts in which entirely different land tenures existed, specially exempted from the authority now given. He thought that such districts should be exempted from the operation of this Act.

MR. RIVERS THOMPSON said that the very object of this Section was that the Act should not extend to places where permanent settlements only partly existed. It would require very strong reasons, indeed, to justify the extension of the procedure provided by this Bill to such districts. At present, certainly, such an extension was not at all contemplated.

THE ADVOCATE-GENERAL said that he would only add that it would be found that the provisions of this Bill were, *de facto*, inapplicable to such districts as Assam and Cachar. The whole system of things, so far as the Act was an alteration of the Act of 1859, was only applicable to districts of the character of Bengal Proper. Therefore any prospect of the Lieutenant-Governor extending this Bill to Assam was extremely remote.

The motion was then agreed to.

MR. RIVERS THOMPSON said, he now wished to call the attention of the Council to some of the earlier Sections of the Bill in which, at the instance of an Hon'ble Member who was then absent (Baboo Issur Chunder Ghosal), the words "dependent talookdars" and "dependent talookdars holding at variable rents" were inserted at a former Meeting of the Council. The Hon'ble Member had done so on the authority of a ruling of the High Court in a suit brought to enhance the rent of a dependent talookdar, in which it was held that there was no provision in Act X of 1859 by which a dependent talookdar could be included in a suit for enhancement under that Act. The Hon'ble Member had shown that ruling to him (Mr. Thompson), and at the time he confessed it had appeared to him, looking only to that one decision, that that was the only ground under which the entertainment of such a suit had been set aside. It had subsequently been brought to notice by his learned friend the Legal Remembrancer, that we could not adopt the proposed amendments without material changes in the substantive law. Regulation VIII of 1793, Section 51, laid down the grounds under which a dependent talookdar was liable to enhancement of rent, and those grounds were different from the grounds under which, by Act X of 1859, ryots and under-tenants were so liable; and therefore, if we incorporated dependent talookdars in the Sections of this Bill, relating to enhancement as the Hon'ble Member who was absent had suggested, we should be making an important change in their position, and deviating from the principles upon which the present Bill was based. The Hon'ble Member, at whose instance the amendment was made, had written a letter, saying that he had himself intended to propose a reconsideration of the Sections in question, with a view to the omission of the words which had been introduced on his motion, and thus leaving the law as it stood under Act X of 1859. He (Mr. Thompson), in the absence of that Hon'ble Member, and with a view to bring the consideration of the Bill to a conclusion, would therefore move that Sections 14, 15, 18, 19, and 20 be restored to the form in which they stood previously to the Meeting of the Council of the 26th June last.

The motion was agreed to.

The postponed Section 1 was agreed to.

A verbal amendment was made in Section 42 on the motion of Mr. Thompson.

The following Section was then, on the motion of Mr. Thompson, introduced after Section 110:—

"Nothing in this Act contained shall in any way affect any of the provisions of Act VII of 1868 of the Council of the Lieutenant-Governor of Bengal, for the recovery of arrears of land revenue and other demands recoverable as arrears of land revenue."

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein, be further considered in order to the settlement of clauses of the Bill.

The motion was agreed to.

THE ADVOCATE-GENERAL said the Council were aware that the Hon'ble Member who was absent to-day (Baboo Issur Chunder Ghosal) had on the notice paper several amendments regarding the question of garden sirdars, the most important of which were those connected with Sections 14 and 15 of the Bill. According to his (the Advocate-General's) recollection, subject, of course, to the reconsideration of the Sections to which he had referred, the Council had got as far as the 19th Section of the Bill; and in the absence of the Hon'ble Member, particularly as the Hon'ble Member opposite (Mr. Eden) had still more extensive amendments involving the general principle of the introduction of private recruiting, he (the Advocate-General) thought that the consi-

deration of such Sections as referred to that point should be postponed. He therefore proposed to take up the consideration of the Bill from the point where they had left off at the previous Meeting, and pass over any clauses with regard to which there were amendments on the paper.

The consideration of Section 19 was postponed.

Section 20 was agreed to.

The consideration of Sections 21 to 26 was postponed.

Section 27 was agreed to.

The consideration of sections 28 and 29 was postponed.

Section 30 provided that every laborer should enter into a written contract for some period not exceeding three years.

MR. KNOWLES said, he could not help thinking that the contract into which a laborer would be required to enter should be for a period of five years instead of three. When legislation on this subject was first proposed, he had supported the three years' provision, but now he thought that we ought to have gained something by the experience of the last six years. We don't find that the coolie, after three years, wished to leave the planter; he generally was open to a re-engagement, and the great objection to the three years' limit was that the coolie was much more valuable to the planter after that term; and there was such competition that other planters often offered a bonus of Rs. 20, to secure the services of a time-expired labourer, after his employer had been to considerable expense in fitting him up, getting him acclimatized, and making his services valuable.

He (Mr. Knowles) thought it hard that, under these circumstances, the planter should be limited to a three years' contract, especially as laborers when sent out to the West Indies, to Mauritius, and to Bourbon, were engaged for a term of five years. Why should the tea planter of Assam and Cachar be put in a worse position? Besides, coolies were much better off in the tea plantations than they were in their own homes, the greatest proof of that being that they were so ready to re-engage after the expiration of their contracts.

MR. SUTHERLAND said he concurred with what had been said by the Honorable Member who spoke last. He (Mr. Sutherland) also had appended a sentence to the Report of the Select Committee, with reference to this Section and to Section 63, where also the same limit of engagement term was laid down. He was not one of those who denied the necessity of legislation on this subject; that that necessity did exist he freely admitted, but he thought it was daily (yearly at all events) passing away, and he hoped the time would soon come when the relations between the planter and the laborer in Assam and Cachar would be on the same footing as those between employer and employed in other parts of India under the ordinary operation of the law. The best way to bring about this state of things was to provide facilities and offer inducements to the laborer to settle down in the Eastern Provinces. He was sorry to see the Hon'ble Member, who had given notice of several amendments (Baboo Issur Chunder Ghosal) absent from his place to-day, for he had mooted in Select Committee a scheme to provide land for each laborer with the object of getting imported coolies to settle down. The Hon'ble Member would no doubt refer to the subject on a future occasion; meantime he (Mr. Sutherland) saw many most grave objections to the plan mooted in Committee, but he should be very glad if the Government would propound some broad scheme for colonizing Assam and Cachar. No such project, however, was now before the Council, and he (Mr. Sutherland) would simply confine himself to advocating indirect action towards this end in the meantime. He would say that in his opinion these Sections, 30 and 63, operated most adversely on the tea-planting interests, and the settling and peopling of the districts. And the Section further on (89) was, perhaps, still more objectionable. He could not advance any stronger arguments,

in addition to what had been said by his Hon'ble friend (Mr. Knowles), than those of Dr. Meredith, the Inspector of Laborers, in his report, where he treated at length on this subject in two closely printed pages, and strongly advocated the extension of the term of contract. He (Mr. Sutherland) was sure it would be admitted that Dr. Meredith's opinion was disinterested. For his (Mr. Sutherland's) part, he confessed to a personal interest in the subject. The report to which he had referred was not in the hands of the Council, but he would read the summary of arguments in favor of the five years' term, which he thought was very much to the point, and very fair both to the planter and to the coolie. Dr. Meredith first spoke of emigration to the West Indies, and then went on to say:—

"The extension would be an incentive to employers to make the best possible arrangements for the sanitary condition and general welfare of their people; they would then have better means of doing so, as the expense and anxiety connected with the uncertain duration of labor would be reduced to a minimum.

I do not think it will be found in practice that the extension will increase the difficulties of recruiting and engaging coolies. There are no instances that I know of to support this supposition, cogent although they may seem at first sight.

The laborer would be benefited, inasmuch as he would be less open to plausible temptations from unprincipled or injudicious persons. He would be more stationary, earn more money, and be better off. In fact as long as the cooly is what he is, I do not see one instance where the extension would prove prejudicial to him.

A true and better statistical return could then be obtained of the healthiness of the country, in as far as the returns would include larger numbers, and extend over longer periods of time, and not be as much subject to the perturbations so inseparable from short periods and small numbers.

The extension would be a boon to the tea enterprise, greater than the concessions lately made in regard to Waste Land grants, and be at the same time free from the pecuniary drawback attendant on them. These concessions I always hear spoken of with gratitude.

I would, therefore, respectfully urge these considerations on the attention of Government whenever an opportunity presents itself for entertaining them."

He (Mr. Sutherland) could not say any thing stronger in favor of the five years' term. He confessed he hardly hoped that the Council would take this view, but he had not heard any strong argument against the extension of the term from any Hon'ble Member who had spoken to him out of doors on the subject. He had not prepared any amendment on the subject, nor would he now formally propose one. The only change necessary would be the substitution of the word "five" for the word "three."

THE HON'BLE ASHLEY EDEN said that the first Bill passed by the Council did provide that the contracts of laborers might extend to a period not exceeding five years; but when the subject came to be reconsidered in 1865, an intimation was made to the Committee by the President, that strong objections had been taken to the term of five years, and that, unless the provision was modified, there was little probability of the Bill ever passing into law. Therefore, in making their Report, the Select Committee, if his recollection was correct, said that, in deference to an intimation received from the President of the Council, they had reduced the period of service from five years to three. But, independently of that, he (Mr. Eden) held a strong opinion that three years was the right term for which contracts of service should be permitted. He thought that the fixing of a short term afforded an inducement to employers to behave well to their laborers, and make them comfortable in order that they might be willing to re-engage with them instead of seeking another master. The objection taken by the Hon'ble Mover of the Amendment had in a great measure been answered by himself. He said the reason why the term of contract should be extended was that after a period of three years the laborer became worth very much more, and the competition for his services was very great; and that his employer therefore ran a risk of losing him when he had become most useful. Surely, if a man after three years' service was worth much more than he was at the com-

mencement of that term, he was the person entitled to have the benefit of his greater worth, and not the planter. His first contract gave him the wages of a raw, unskilled laborer; if after three years he became, as was admitted by the Hon'ble Member, a skilled laborer, obviously he was entitled to the wages of a skilled laborer; and he (Mr. Eden) thought he was entitled to go to the best market with his skill. He thought it was hard indeed that, when a laborer had by his industry increased his worth, he should be deprived of the benefit of that improvement by a long contract. In the first three years of industrial servitude, the planter had recouped himself for the cost of importation. There were, besides, good and bad employers, and good and bad gardens, and it was very hard that a man should bind himself for so long a period as five years on an unhealthy plantation, and under a bad employer; and it was, on the other hand, against the interest of the planter to be saddled with idle, good-for-nothing laborers for such a long term. The result of such a state of things would be great discontent, and would lead to desertion and ill-treatment; and the control you gave the employer over the laborer would be such that he would not care how he treated the laborer. The case of the colonies was, he believed, not quite similar; there, he thought, but he might be mistaken, that, although the term of service was five years, the laborer after the first three years was entitled to an increase of wages.

MR. MONEY said, it appeared to him that in discussing some of these Sections we were anticipating the decision of the Council on the general question of the employment of garden sirdars, and should be likely to get into difficulties. The question now before the Council was whether the contracts of laborers should be for a period of three years or five years; and one of the chief arguments adduced in support of the longer term was that the planter was put to very great expense in providing his laborers and was entitled to their services for a certain duration of time, as a fair remuneration for the expense he had undergone. It seemed to him (Mr. Money) that this question was closely connected with the question of garden sirdars.

The price at which coolies could be obtained through the medium of garden sirdars would be very much lessened, and therefore one of the main arguments on which the extension of the term of contract was advocated, would fall to the ground. Then by Section 58, any laborer taken up by a garden sirdar, who should, without reasonable cause, refuse to enter into a contract, would be liable to a fine equal to the expense incurred by the planter, and in default of payment would be liable to imprisonment. As he never could pay the fine—for, if he could, he would not be there—the alternative was signing the contract or imprisonment. Now, evidently the case of that laborer was very different from the case of the laborer who entered into his contract at a depôt; these might be led away by the garden sirdar's false promises, but their assertion of having been so led away would not be held to relieve them of their liability to enter into a contract. Here, again, the question of the employment of garden sirdars came in, and the present question, whether or not laborers should be required to enter into a contract for three years or for five years, was affected by it. He (Mr. Money) considered that the question before the Council was so much mixed up with the question of the employment of garden sirdars, that it was difficult to take in all the arguments in favor of a five years or a three years' contract, until the question of how a laborer was to be recruited, whether by a contractor or a garden sirdar, was first disposed of.

BABOO PEARY CHAND MITTRA said that he was equally anxious that every protection should be accorded to the laborer. If he were satisfied that the industrial services of a laborer for three years did not do the laborer substantial good in making him a useful member of society, and training him to

The Hon'ble Ashley Eden.

earn his livelihood effectually, he (Baboo Peary Chand Mittra) would not advocate the extension of the term of service to five years. It appeared that there was a feeling that the sooner this engagement terminated the better, and that, after three years, the coolie became a free man. He made large allowances for this apprehension, because there had been many cases of ill-treatment of the coolies, and he did not deny that some of the managers connected with gardens, or their assistants, had been guilty of gross misconduct. But the real question before the Council was whether the general condition of the laborer in tea gardens was better or worse? From the enquiries which had been made, it was clear that there was an improvement in their condition. A laborer who originally carried burdens only, was, from his connection with a tea garden, a different being—socially and intellectually. He knew something about the cultivation of tea and its manufacture, and he could direct his labor much more to his advantage than before. If we were satisfied that the laborer improved from his connection with tea gardens, there could be little hesitation in coming to this conclusion that after three years he must more or less dictate his own terms, and that the master would be forced, from a regard to his own interest, to secure the laborer's services, and treat him with every kindness. Taking all the circumstances into consideration, and considering human nature, he (Baboo Peary Chand Mittra) should say that the extension of the term of contract to five years would not only do good to the employer, but also to the laborer. The laborer, after three years, might demand a higher salary, and provision might be made for this purpose in the Bill. If it were the wish of the Council that the Section should be modified to that effect, surely there could be no difficulty in doing so.

THE ADVOCATE-GENERAL said that, as he understood it, the amendment before the Council was confined to this 30th Section, *viz.*, to substitute "five" for "three," and he could not help thinking that it would be better to confine our attention to the question whether that amendment should or should not be introduced, independently of the general question of the employment of garden sirdars.

His (the Advocate-General's) recollection of what took place in 1865 was pretty much as it had been described by Hon'ble Member opposite (Mr. Eden); and he would only add that when it was said that no argument had been brought forward against the extension of the term of contract to five years, he would answer, because when the question was to make an alteration in a law which had been in force for four years, it was for those who advocated a change in the law to show sufficient reason for the introduction of the amendment.

He was at a loss to understand how the question of the employment of private recruiting had any bearing on the question as to whether the term of a laborer's contract should be extended. He certainly did not understand that, by the employment of private recruiters, to whatever extent it might be carried, was anticipated any material diminution in the cost of obtaining laborers.

[MR. KNOWLES.—There would be a considerable reduction in the cost, because the contractors must have their profit].

THE ADVOCATE-GENERAL continued.—He should have thought that the question of private recruiting would have no bearing on the question, because he could not see how the extension of a system of private recruiting could bear much on the question of the expense of procuring laborers. But he was told that the expense would be reduced, and that it would be very much less than it was now; and to that extent less weight must be given to the argument that it was not fair that the planter should undergo a certain expense, and get the laborer for only three years. Therefore, we were perfectly able to deal with the question now, pending the determination of the question as to whether or not a system of private recruiting should be recognized.

He (The Advocate-General) would now pass on to the question of the loss said to be suffered under the present system of three years' contracts. For four years planters and owners of tea gardens had imported a very great number of laborers; and the only consideration was that, under the existing system, they found it worth their while to do so. How was it a matter in any way connected with the principle or object of the Bill, to assert that a bonus had to be given by the planter to secure the services of the laborer for another two years, to make up the Rs. 50 or 60 expended in getting him up? That was a question which ought to be considered in the laborer's point of view. If it was a fact that, after three years' experience and practice, and becoming habituated to one form of labor, the laborer, at the end of the three years, was found worthy of greater hire, in the ordinary course of things he was the sole person who ought to have that benefit. With regard to the argument that, under the existing state of the law, at the end of three years, it was apprehended that the laborer, as soon as he had become competent and of more value than when introduced as a raw coolie, would be enticed away; that was a matter which would apply equally to a five years' coolie, if the term of contract were extended; and, on the other hand, there was the answer that, if it was worth while for the adjoining or other planters to purchase the service of laborers of three years' service, then, assuming that it was worth the while of the original employer to bring the laborer up, it was equally worth his while to purchase his services. Thus you must consider the question in the interests of the laborer, and not of the employer alone. For this reason alone, he (the Advocate-General) should most strongly oppose the alteration. But he thought he was justified, as the mover of the Bill, in saying, that he was morally certain that such an alteration would seal the fate of the Bill, and send it to the same limbo as the Bill of 1867; and therefore he was morally bound to oppose the amendment.

As to what was said of the improved position of the laborers, that was rather a curious reason to advance at a time when this Bill was passing through the Council for the express purpose of giving greater protection to the laborers. In introducing the amendment, we should be anticipating the effect of this Bill which had not become law. The force of that argument was not very clear to his mind.

MR. SUTHERLAND said that, after what had fallen from the learned Advocate-General and the Hon'ble Member opposite (Mr. Eden), he was not prepared to press the amendment: indeed his speech did not take the shape of an amendment; it was rather to learn the view of the Council that he had spoken.

The Section was then agreed to.

Sections 30 and 31 were agreed to.

The consideration of Section 32 was postponed.

Section 33 was agreed to.

The consideration of Section 34 was postponed.

Sections 35 to 39 were agreed to.

The consideration of Section 40 was postponed.

Sections 41 to 43 were agreed to.

The consideration of Section 44 was postponed.

Section 45 was agreed to.

The consideration of Section 46 was postponed.

Sections 47 to 51 were agreed to.

The consideration of Sections 52 and 53 was postponed.

Sections 54 and 55 were agreed to.

The consideration of Sections 56 to 59 was postponed.

Section 60 was agreed to.

The consideration of Section 61 was postponed.

Section 62 was agreed to.

The consideration of Section 63 was postponed.

Section 64 was agreed to.

The consideration of Section 65 was postponed.

Section 66 was agreed to.

Section 67 provided a penalty of Rs. 500 if sufficient and proper house accommodation, water-supply, and sanitary arrangements were not provided; and a penalty of Rs. 100 a day for every day during which such omission continued.

After a verbal amendment made on the motion of the ADVOCATE-GENERAL—

MR. KNOWLES moved the substitution of the words "ten rupees" for "one hundred rupees" in line 16. He said a penalty of Rs. 100 a day was excessive. In cases where sanitary arrangements could not for a month be provided to the satisfaction of the Inspector, the employer would be mulcted in a sum of Rs. 3,000, which would to some employers be ruinous.

THE ADVOCATE-GENERAL said that the fine of Rs. 100 a day was the maximum, and was not intended to be imposed in every case. But in any very gross case of neglect of the provisions of the Act, which might seriously affect the health and comfort of the laborers, he did not think the fine excessive. Unimportant deviations from the rules laid down in respect of house accommodation, water-supply, and sanitary arrangements would not be visited with the maximum penalty.

The motion was then put and negatived, and the Section as amended was agreed to.

Section 68 was agreed to.

The consideration of Section 69 was postponed.

Sections 70 to 87 were agreed to.

The consideration of Sections 88 and 89 was postponed.

Sections 90 to 93 were agreed to.

The consideration of Section 94 was postponed.

Section 95 provided that compensation was to be given to the laborer if wages for more than two months were due; and Section 96 enacted that the non-payment of wages for more than four months would, amongst other causes, operate as a cancelment of the contract.

THE HON'BLE ASHLEY EDEN said that it had been brought to his notice that there was a practice in some tea estates to pay a laborer every month a portion of his wages for the month, and thus keep up a running account; so that though a laborer might not have received his full wages for more than four months, there would not be four months' wages due to him. He (Mr. Eden) did not think that was the proper construction of these Sections.

MR. KNOWLES thought that the meaning of the Act was that there should not be an accumulation of wages to an amount exceeding two or four months as the case may be.

THE ADVOCATE-GENERAL said that the meaning of the words to some extent depended on the form of the contracts. He supposed that, according to the contracts, the wages were paid monthly, and therefore under this section the wages must be paid monthly. The words of the Section would certainly not bear out the construction that it meant an accumulation of wages extending over many months. As, however, there was some difference of opinion, he would ask that the sections be allowed to stand over.

The consideration of Sections 95 and 96 was accordingly postponed.

Sections 97 to 99 were agreed to.

COURTS OF SESSION.

THE HON'BLE ASHLEY EDEN postponed the motion, which stood in the List of Business, for the consideration of the Report of the Select Committee on the Bill to empower the Lieutenant-Governor to direct Courts of Session to be held in different towns in a District.

The Council was adjourned to Saturday, the 31st instant.

Saturday, the 31st July, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq., C. B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq. and
Baboo Chunder Mohun Chatterjee.

COURT OF WARDS.

MR. MONEY said that, from the time the Government first enacted laws for the Revenue Administration of this country, it directed its attention to the efficient management, under the superintendence of Government officials, of the estates and property of persons disqualified by reason of sex, age, idiotcy, and notorious profligacy. In 1793 the Court of Wards was first constituted, and by Regulation X of that year, certain rules were enacted for the guidance of those Courts, and the management of wards' estates: subsequent Regulations modified and altered some of those rules, and later certain changes were made in the substantive law. By Regulation L of 1793, permission was given to allow women to remain in charge of their estates when considered competent to undertake their management; and by Regulation VII of 1796 contumacy and profligacy of character were held to be insufficient grounds for the disqualification of proprietors of estates. The body of law relating to this subject, beginning with Regulation X of 1793, and ending with Act XXVI of 1854, contained some omissions and defects. In the first place no power was given by law to sell or mortgage any part of a ward's estate to pay off debts. It was true that the Civil Courts had recognized that such authority did exist, but the law was silent on the point, and it was clearly desirable that such an authority should stand on the strongest basis. *Secondly,* there was no power to divide off property by Butwarrah, and yet clearly such a division was a necessary preliminary in many cases to selling a portion of an estate. *Thirdly,* it had been found, in many cases, where estates extended over large portions of the country, desirable to have more than one manager; but the law recognized only the appointment of one manager. This difficulty had been got over by appointing one chief manager with sub-managers under him; but it was very desirable, in some cases, where estates were situated at long distances from each other, (for example there was a ward's estate now in the Presidency Division of which a portion was situated in Chittagong,) to give authority to appoint entirely separate managers, who were to have no connection with the manager in the division wherein was situate the chief portion of the estates. Again, at present, the law only recognized as properly under the management of the Court of Wards entire estates paying revenue to Government; but it was desirable and expedient that, if a ward, whose entire estate came under charge of the Court of Wards, possessed a share in a joint undivided estate, or was owner of a rent-free holding, the same authority should have charge of those other descriptions of property; and in fact, under a ruling of the Government, the local authorities had assumed charge of such property; but it was doubtful how far such a course was lawful. Again there had been some doubt with regard to the respective jurisdictions of the Commissioner and the Board of Revenue, and with regard to the relations of both towards the local Government, with reference to the appointment of managers, guardians, and the like.

The object of the Bill was to remove all these defects, and to supply these deficiencies; and there had also been changes not of a material character. For example the law at present limited the amount of allowance for a ward's support to ten per cent. of the revenue realized by Government from his estate. But by the Bill full authority was given to the local authorities to allow such sum for a ward's support as the condition of the estate would warrant. As he (Mr. Money) had said before, the object of the Bill was to remove the

defects and supply the omissions that existed. The chief feature in it was that in each division there should be one Commissioner, who should be the Court of Wards having the entire control in the estates in his division; that he should appoint the Collector who should have charge of the property of the ward, and the Collector who should have charge of his person, and who should decide as to the best form of management, whether through a manager appointed for the purpose, or by letting the estate in farm, etc. The manager appointed would, however, be subject to the approval of the Board of Revenue. Provision was also made for the intervention of the Board, when the lands comprising the ward's estate were situated in more divisions than one; and it was left to the discretion of the Board, whether the entire management of the whole property should be left in the hands of the Commissioner within whose division the largest portion of the estates was situate, or whether each Commissioner should have separate charge of the property within his division. This could only be settled by the intervention of a central authority, and accordingly a general discretion was given to the Board of Revenue in such and other matters, and finally to the Lieutenant-Governor.

Small matters of detail had also received consideration, and finally all the various laws on the subject had been embodied in the Bill. With these remarks he begged to move that the Bill to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal be read in Council.

The motion was put and agreed to, and the Bill referred to a Select Committee consisting of the Advocate-General, Mr. Thompson, Koomar Satyanund Ghosal, and the mover, with instructions to report within four months.

IMPROVEMENT OF THE PORT OF CALCAUTTA.

THE HON'BLE ASHLEY EDEN moved that the Bill better to provide for the improvement of the Port of Calcutta be read in Council. In doing so he said that he did not think he could add any thing to what he had said at the previous Meeting of the Council as to the circumstances under which the Bill was introduced. The Bill was purely a temporary one; it suspended the powers of the Committee of Justices, and vested the property of the Trust in the Secretary of State, and the administration of its affairs in the Lieutenant-Governor, but without the power of raising money by debentures; and certain Sections of Act X of 1866, relating to routine and the manner in which the Justices should conduct the meetings of the Trust, were repealed.

The motion was agreed to.

THE HON'BLE ASHLEY EDEN then applied to the President to suspend the Rules for the conduct of business to enable him to move that the Bill be carried through some of its subsequent stages.

THE ADVOCATE-GENERAL said that he wished to make one observation on the more general subject. The Bill before the Council was one of a purely temporary character; and he hoped, whenever it might be necessary to consider a more permanent measure, the Council would deliberately compare the relative advantages of a body of Trustees of any kind, as contrasted with the administration of the Port Fund by a single responsible Officer. He hoped he was not out of order in making this remark.

THE PRESIDENT having declared the Rules suspended, the clauses of the Bill were settled without amendment.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein be further considered in order to the settlement of the clauses of the Bill. He regretted to say that the

Hon'ble Member who was prevented by indisposition from attending the last Meeting of the Council (Baboo Issur Chunder Ghosal), was still absent from the same cause, inasmuch as the Hon'ble Member was a Member of the Select Committee on the Bill, and had certain amendments on the Notice Paper. He had expressed a wish that the present Bill should be referred back to the Select Committee, with the addition of the Hon'ble Member on the right (Mr. Thompson), but he (the Advocate General) must say that such a course as that would lead only to unnecessary and quite useless delay, as almost all the questions now left for discussion had been more or less ventilated: they were questions in which the Select Committee differed in opinion, and he could not think that any advantage would arise from further discussion in Select Committee, rather than that the discussion should be continued in the Council at large. Therefore he had no hesitation in moving that the consideration of the clauses be resumed, notwithstanding the absence of the Hon'ble Member.

The motion was agreed to.

THE HON'BLE ASHLEY EDEN said, the real object of the amendments of which he had given notice was to put a stop altogether to the system of private recruiting in small parties without restriction. The main ground on which recruiting by garden-sirdars was advocated was on the score of cheapness and the selection of laborers. But for all practical purposes the same objects might be attained under the subsequent Sections of the Bill, which would enable the planter to send down his own recruiter (and it was the recruiter who formed the chief item of expenditure under the present system), subject to the same restrictions as ordinary contractor's recruiters; and after all, if efficiency of control was sacrificed to cheapness, that was not a real and solid argument for a change. His (Mr. Eden's) opinion had always been that anything like a withdrawal of the safeguards provided by the Bill and by the existing law, was to be viewed with extreme caution and jealousy. When the Bill was read in Council it was intended that every laborer should be required to enter into a distinct engagement before leaving the recruiting districts. And even with this security, he (Mr. Eden) drew the special attention of the Council to the matter as one involving danger to the whole system. He observed:—

"Personally he (Mr. Eden) thought this was a matter which would require careful consideration, that is to say, it would, unless very carefully guarded, encourage a loose procedure that would amount to an evasion of those provisions of the Act which had been found necessary with regard to laborers recruited by contractors and licensed recruiters. He thought it was quite certain that these garden sirdars were an ignorant class themselves, and were no more fit to be trusted than the old contractors before the passing of the Act of 1863 were, and he thought that it could not be expected that these men would be better able to look after these large bodies of men, and to arrange for proper care and regularity in their transport, than the old contractors had been."

Therefore, from the very beginning, it did appear to him that there was a blot on the scheme, and that we were opening the road to a practical evasion of all these safe-guards. But the Bill as it now stood made the matter still worse than when he had first protested against it, for it had done away with the engagement before leaving, and left the matter of engagement to be settled in the district in which the laborer was to be employed. And before the Select Committee he several times stated his strong objection to these provisions regarding garden-sirdars, and in one important respect the evil was a great deal remedied by the alteration which placed under all the provisions of the Act a sirdar recruiting a larger number of laborers than twenty. Still, as he said before, in respect of those recruited in numbers of less than twenty, the laborers were left absolutely without protection, and were exposed to all the evils of crimping, careless treatment, and starvation, which had first led to Government interference in 1863. These garden-sirdars were not men who could be trusted, and to leave matters as they were left in this Bill, would practically amount to setting aside all that had ever been done, and which no one doubted had been

necessarily done; for he was quite sure that if the conditions in regard to unrestricted recruiting in small parties were allowed to stand, every laborer in future sent to the Eastern Districts, would be sent under these provisions. He wished the Council to bear in mind that there were four distinct stages in which the law provided for the protection of the laborer; first, in regard to recruiting, then in the engagement or execution of the contract, then during transit to the place of labor, and lastly protection during the laborer's term of service in the tea districts. With regard to laborers in batches not exceeding twenty in number, the Bill took away altogether the first three stages of protection. The laborers were left uncared for, and were exposed to all the crimping and deception which unquestionably existed where it was not checked: we know nothing of the nature of their engagement; whether it was fair, and whether its real terms were understood by the laborers—indeed they were to have no engagement at all until they were taken up to the scene of their labors. Again we did not know how many were taken from the recruiting districts and how many arrived at the tea districts, and we should have no means of ascertaining the rate of mortality that existed. It was true that when the laborers arrived at the tea districts they would be under protection, but that would not enable us to know how many were recruited or how many really were introduced into the districts. As the Bill now stood, a man was taken away from his home under the inducements offered to him by an ignorant but cunning returned laborer directly interested in procuring laborers for his employer. He did not know what he was engaged for or where he was going; and when he arrived at the plantation, if he refused to enter into a contract, however unfair or one-sided that contract might be, he was liable to imprisonment. He was so far from his home in a strange country that he was practically handed over to the employer bound hand and foot: he had no option but to sign whatever terms were put before him.

He (Mr. Eden) was entirely opposed to any form of recruiting which did not provide that the laborer should go up only under a written engagement entered into while he really had an option of accepting or refusing its terms, and explained to him in detail by some responsible Officer of Government. It was maintained by some that there was something very advantageous to the laborer in going up unengaged, and that, though recruited by a particular garden sirdar for a particular garden, he arrived practically a free agent with option to engage with the employer for whom he had been recruited, or with any body else. He (Mr. Eden) thought there was something absolutely ridiculous in that argument, because no planter in his senses would incur the risk and expense of bringing up a coolie, if, when he arrived at the plantation, he was at liberty to enter into an engagement or not as he chose. Those who advocated this view must know this well, that the coolie could have no real option in the matter, or if he had, a great loss would be incurred by the planter for the benefit of his neighbours; for it was impossible to devise any scheme by which, when a laborer on arrival elected another plantation, the cost of importation could be recovered from the planter with whom he finally settled down. That argument, therefore, was founded on an entire misunderstanding of the practical working of the system of labor contracts. The great point on which he (Mr. Eden) laid stress was that no man should be allowed to leave his District without having a distinct and positive engagement showing by whom he was engaged, what his wages were to be, and the period of his engagement; and he (Mr. Eden) should feel very strongly opposed to any arrangement which did not provide for that. The point was very strongly argued in a letter from the Government of Bengal to the Government of India reviewing the Tea Commissioners' Report:

"The Lieutenant-Governor believes the particular advantage alluded to by Colonel Hopkinson to be quite a delusive one. Practically the laborer will be taken to the garden for which he has been engaged, and will there, as a matter of necessity, have to enter into

a contract. How in a strange country, can he possibly resist? At best he will take an advance, and be bound under Act XIII of 1859, if not under the Labor Law. There will be no security that he really knows where, or for what purpose, or with what prospects, he is going away from his own District, and there will be no check on the mortality in transit. It appears to the Lieutenant-Governor that the presence of the man recruited before the District Registering Officer is indispensable, and must, under all circumstances, be insisted on. Indeed it seems to the Lieutenant-Governor that the proposal, as it now stands, is a virtual abandonment of all Government protection to the laborer, either in the way of ascertaining that he really knows where he is going, and on what terms, and also in the way of obtaining that security for his proper accommodation and medical attendance in transit which really has formed the chief ground for Government interference in any form."

Those were the opinions of the Lieutenant-Governor on reviewing the Report of the Tea Commission. He (Mr. Eden) was quite unable to see any ground whatever for the opinion that that view of the question was not a perfectly correct one, and he certainly saw nothing which should lead to a modification of it. Great confusion had, he found, arisen with reference to Section 109 and the Section which related to recruiting in small parties under twenty. It was said that it was inconsistent to vote for one and vote against the other. Now Section 109 had nothing whatever to do with the recruiting of laborers. When the former Act was being passed, it was said that it was very hard that a laborer returning from the Tea Districts, and bringing down considerable savings and convincing his family of the fine opening for employment which existed for them in the Tea Districts, was not able to take up his relations with him without having to go through a contractor's hands, and the forms of the Act. It was quite possible that a man might wish to accompany his relations back to the Tea Districts, and Government had no desire to interfere with such persons, and indeed had no right to interfere with their going of their own accord from one part of Bengal to another; but having regard to the enormous mortality which had been shown to have occurred in passenger boats, the law provided that not more than ten persons should be permitted to go together to seek for labor in the Tea Districts. But that had nothing to do with the system under which a sirdar was sent down to hunt out and seek for laborers all over the country, and induce them by any means to go back with him to the Tea Districts, acting, as he did, as the agent for a third party. There was, therefore, nothing at all inconsistent in objecting to recruiting in small parties without any restrictions; and upholding Section 109 of the Bill. For his (Mr. Eden's) own part he would prefer, as in the late Law, to restrict the provisions of Section 109 to ten persons; but there was a strong opinion that that number was too restrictive, and he had, therefore, agreed to its extension.

With regard to the amendment which stood in his name, he had been in communication with the learned Advocate-General, and was prepared to accede to a modification proposed by him which, to a great extent, met his objection. He (Mr. Eden) would therefore withdraw his amendment in favor of a clause providing that all laborers recruited by garden sirdars in parties of less than 20, should be taken to the nearest Magistrate or other Registering Officer whom the Lieutenant-Governor might appoint; and they would then go through the same course as laborers brought down to Calcutta: they would have their contracts signed, registered, and explained to them.

As soon as that was done, the coolies would be allowed to go on with the garden sirdar in any way he wished; a list of each despatch being sent up to the Magistrate of the District in which they were going to labor. They would be subject to the provisions of the Bill regarding arrangements for diet and clothing; and they would take with them copies of the contracts, and on arriving at the Tea Districts, they would go before the nearest Magistrate, and would be compared with the list sent up from the recruiting Districts. In this way we should arrive at an exact knowledge of the extent of the mortality that

might take place. Under the system in the Bill as it now stood we should have no such check, and we should probably be told there had been no mortality; in fact there could be no account of the mortality. But, under the proposed provision, if a sirdar left with twenty men, he would have to account for them. He (Mr. Eden) thought the Advocate-General's modification met his (Mr. Eden's) main difficulty, and he was therefore prepared to withdraw his amendment in favor of that proposition; and he hoped the provision would meet the views of the Council generally. It seemed to him that nothing short of such a provision would prevent the actual ignoring of the provisions of the Act—provisions which were essentially necessary to ensure freedom from crimping and excessive mortality.

THE ADVOCATE-GENERAL said that it would probably be most convenient that he should follow the Hon'ble Member, and explain what he proposed to substitute for the Hon'ble Member's amendment. He must say he thought there was a great deal of weight in the reasons which had been given for the employment of private recruiting through the medium of garden sirdars, and any amendment resembling in effect those which were to have been proposed by the Hon'ble Member who was absent (Baboo Issur Chunder Ghosal), and who would have put a restrictive limitation on that system of recruiting, he (the Advocate-General) should have found it his duty to oppose. He submitted that the Council should leave the 11th Section, which, in general terms, authorized the engagement of laborers through garden sirdars; Section 12 which required him to submit his certificate to the Magistrate, and Section 13 regarding the countersignature of the certificate. Then he (the Advocate-General) understood that, according to the practice which had prevailed pretty extensively, the agency of private recruiters had been made use of in two forms. Either the owner of the garden or his Calcutta Agent, instead of availing himself of the services of the licensed local recruiters, had sent persons whom he (the Advocate-General) might call garden sirdars, for the purpose of engaging more than ten native inhabitants; and that had been done by these garden sirdars obtaining the authority of a recruiter's license; or under the existing law, by which the provisions of the Act were not applied to parties voluntarily proceeding to a number not exceeding ten, they had been recruited and accompanied by persons sent down from the gardens,—in other words by garden sirdars. What he (the Advocate-General) proposed was that we should adopt the number of 20, as we did in Section 109, as the maximum number of native inhabitants who should be allowed to proceed to the districts for the purpose of laboring for hire without any inducement or anything whatever in the shape of recruiting, no matter by whom; and instead of the garden sirdar being authorized to recruit up to that number, leaving it entirely open and contingent as to what contract should be entered into after they arrived at the place of labor, that the laborers should be taken up before the authorities for the execution of their contracts as early as possible after their engagement by the garden sirdar. His (the Advocate-General's) observations were limited to the case of garden sirdars not authorized to engage more than 20 laborers: as regards other garden sirdars, they were recruiters to all intents and purposes. Therefore what he proposed was that something analogous to the provision of the present Section 19, with regard to the production and registration of native inhabitants before the Magistrate of the District, should be applied to these small parties not exceeding 20 recruited by garden sirdars, without requiring them to take their men afterwards before the Superintendent of Labor Transport to have their contracts explained and executed. In short, that the whole thing should be done at one and the same time.

In the Sections which he (the Advocate-General) had prepared, he had provided that the registration

and execution of the contract should take place before the Magistrate of the District or Division in which the laborers were recruited. It had been suggested that it would be more in conformity with the practice at present obtaining in regard to private recruiting in the two modes already referred to, and which had been found more satisfactory to owners and Calcutta agents, that such native inhabitants as were recruited through garden-sirdars should be brought to Calcutta for the execution of their contracts; and, therefore, in lieu of the explanation and registration of the contract being made before the Magistrate of the District, he (the Advocate-General) was quite ready to consider any proposition for the substitution of the Superintendent of Labor Transport as the authority before whom the execution of the contract should take place. But subject to that being moved, he would now read to the Council the Section which he proposed, and which went on the principle of every thing with regard to the registration and execution of the contract being done at once before the District or Divisional Magistrate. He, therefore, proposed to introduce after Sections 16 and 17, which provided for the temporary accommodation and removal of the native inhabitants to a depôt (where they were to be removed to a depôt), the following Sections with relation to parties not exceeding 20 recruited by a garden sirdar:—

"XVIIa. Every garden sirdar authorized to engage not more than twenty native inhabitants shall bring each native inhabitant engaged by him before the Magistrate of the District or in charge of a sub-division of the District in which the engagement took place, or before some officer specially authorized in that behalf, and shall produce his certificate to the Magistrate or other Officer. He shall also state to the Magistrate or other Officer the names of the inhabitants engaged by him, and produce in respect of each the proposed contract according to the provisions of this Act ready for execution. Thereupon the Magistrate or other Officer shall examine each native inhabitant with reference to his proposed contract, and if it appears that he understands its nature as regards the locality, period, and nature of the service, the rate of wages, and the price at which rice is to be supplied, and that he is willing to perform the contract, the Magistrate or other Officer shall register in a book to be kept in such form as the Lieutenant-Governor shall prescribe, the name of such inhabitant, the place at which it is intended he should embark, and the place at which he is to labor. If the Magistrate or other Officer shall be of opinion that such native inhabitant does not understand the nature of the proposed contract, or that he has been engaged through fraud or misrepresentation, or if the garden sirdar shall not have produced his certificate, the Magistrate or other Officer shall refuse to register the name of such inhabitant; otherwise the Magistrate or other officer shall cause such native inhabitant and the garden sirdar to sign the contract in duplicate in his presence, and the contract so signed shall be binding on the garden sirdar's employer.

"XVIIb. The Magistrate or other Officer shall forward a copy of every registration made under the last preceding Section, and one copy of every contract signed as aforesaid and attested by him, to a Magistrate of the district within which the laborer is to labor.

"XVIIc. As soon as possible after the arrival of the garden sirdar with the laborers at the place of disembarkation or at the nearest civil station in the district last mentioned, the garden sirdar shall report himself to the Magistrate of that district, and such Magistrate shall check the number of laborers landed with the number of those registered, and shall report to the Superintendent of Labor Transport at Calcutta any deaths which may have occurred on the journey. Any garden sirdar who neglects to report himself as aforesaid, shall be liable to imprisonment of either description which may extend to three months."

These Sections, it would be seen, got rid of what certainly did appear objectionable, that the men should be taken up through the agency of garden sirdars to the tea districts, without, during the whole of that time, being under contract. It really seemed to him (the Advocate-General) that it would be clearly for the benefit of the employer as of the laborer, that both sides should be bound by contract as early as possible, so as to prevent the case of a man being taken up to the Tea Districts at the expense of the owner or employer, and then declining to execute a contract on the plea that he did not understand the nature of the engagement under which he was to labor.

The object (and this would be a matter carried out by the civil autho-

The Advocate-General.

rities, and would impose no burden whatever on the garden sirdar) of forwarding copies of the number of laborers registered, and copies of the contracts to the Magistrate of the District in which the persons engaged were to labor, was with a view to testing (he thought it was a most important object) the effects of the private-recruiting system by ensuring proper returns with regard to mortality. The Magistrate, before whom the contract was entered into, would forward a copy of the contract and list to the Magistrate where the laborers were going, and this Magistrate, on the arrival of the laborers, would check the number actually arrived with the number entered in the register, the copy of which was forwarded. Deaths which had occurred in the transport would be reported to the Superintendent of Labor Transport at Calcutta, so as to enable him to compare the returns of laborers engaged by private recruiters with those which occurred amongst other laborers. It was only by some such course that any fair means of knowledge could be obtained by which we could test the comparative safety and propriety of the two systems of private recruiting, and recruiting by contractors.

MR. SUTHERLAND said he was unwilling to say any thing that might cause delay in settling the question before the Council, but he confessed that he felt at a disadvantage with all the amendments already circulated, and the additional amendment which the learned Advocate-General had just read, and which he (Mr. Sutherland) had not been very well able to follow. He was glad the Advocate-General had answered the Hon'ble Member opposite, and defended the general principle of recruiting by garden sirdars. It was not till he saw the Hon'ble Member's amendments, that he (Mr. Sutherland) was aware that the Hon'ble Member objected so strongly to the principle of recruiting by garden sirdars. After what had been said by the Advocate-General, he (Mr. Sutherland) did not think he need say much in defence of the system of private recruiting, further than to state that in his own experience the laborers recruited by garden sirdars were composed of a much better class of men, and were obtained at a very much less cost. It had been said that parties of laborers not exceeding ten in number, recruited under Section 40 of the existing law, were not recruited in direct accord with the technical wording of the Act. He did not know how this might be, but he thought it was now high time to recognise the principle of sirder recruiting, and free it from all restrictions but those absolutely necessary. He felt that the system sought to be enacted by the Hon'ble Member opposite was a purely nominal concession, and would be of no real benefit to the planter, accompanied as it was by restrictions such as were imposed on recruiting by contractors, and now again desired to be imposed on the whole system of private recruiting. He (Mr. Sutherland) had received a letter from a gentleman well entitled to speak on the subject, to whom the Advocate-General had paid a deserved compliment the other day, when moving for leave to bring in the Bill—he meant Mr. Bullen Smith, who, writing on the subject of the unfettered movements of parties not exceeding 20, said:—

"All evidence is against interfering with this most useful kind of emigration. I was a Member with Mr. Cockerell and Dr. D. B. Smith of a Committee to enquire into the recruiting system and the transit, and the evidence we heard was so very decidedly in favor of these small parties, that I believe we recommended an increase to the number allowed to go together in this way. More recently in 1867 the question of allowing the increase to 20 had the most full consideration in Committee of the Bengal Council, the result being that such increase was recommended. It was found generally (as we believe in our own experience, and perhaps Begg, Dunlop & Co. also) that these small parties going up as they like, travelling as natives do, arrive at their destination with infinitely fewer casualties, and in much better case, than large numbers of coolies going up under the Act. It was further admitted that in such parties, few if any, cases of deception were to be found, the reason being that in nine cases out of ten the leader was a man who had worked in the garden and prospered, and who spoke from his own personal knowledge of things as they were, to those who were for the most part his own relatives and friends. I have a very distinct recollection that considerable importance was attached

to the encouragement of this, what I may call domestic and really voluntary emigration, as opposed to the droves brought down by the professional system. What was then felt (although Section 82 would indicate a different feeling now somewhere) was, that this privilege accorded to small parties was a means, and not an unimportant one, towards the great end of drawing labor into the province, and especially labor likely to settle and remain there. Laborers brought up in this way rarely desert or give trouble, but settle down quietly to their work. To this system and to the inducement offered by healthy gardens and good treatment to re-engagements, I look for the real, most effectual, and by far the most desirable solution of the labor difficulty in Cachar."

The amendment, as far as he (Mr. Sutherland) understood it, while providing that the execution of the contract should take place at Calcutta, imposed restrictions on the garden sirdar in the mofussil.

[THE ADVOCATE-GENERAL.—What he said was that he was quite open to consider any proposal for the execution of the contract taking place in Calcutta, but his proposal contemplated the explanation and execution of the contract in the district where the recruiting took place.]

MR. SUTHERLAND resumed.—As the Advocate-General said that he was open to consider a proposal to permit the execution of the contract at Calcutta instead of in the recruiting districts, he (MR. Sutherland) would be willing to accept that arrangment; but what he wanted to say was, that the obliging the sirdar, as the amendment provided, to register the laborer and to have the contract executed in the mofussil, was not only, as admitted by the Advocate-General, a departure from the principle already determined upon with regard to private recruiting, but was also a departure from the system in vogue through the agency of a licensed contractor.

In short the proposed provision entirely did away with any good planters could expect from recruiting parties of under 20 by sirdars. The sirdar not only wanted to get men for his employer, but to put his own country people in the way of earning very much more than they would otherwise do; but he was entirely at the mercy of the professional recruiters before he had access to the Magistrate: he had no experience of Courts and Amlah. In his (Mr. Sutherland's) own experience of recruiting by garden sirdars, he had seen a number of instances of men being crimped away by licensed recruiters, who prevented the sirdar getting access to the Magistrate; and the result was that we had to pay, in some instances, more for garden sirdar's coolies than the contractor's terms, in consequence of the poor man's first collected coolies being spirited away by recruiters, compelling him to re-engage others at a fresh expenditure If we confined ourselves to the limit of twenty men described in Section 109 of the Bill, without restrictions, he (Mr. Sutherland) thought it would meet to a great measure the present labor requirements of the Tea Districts. He did not not believe that large extensions of tea cultivation were contemplated, and if the laborers in the various estates were kept up, it was all that the planters desired; and at the present time these concessions would come in very appropriately from the Government, for the benefit not only of the planter but of the laborer. He would again remark that the registration and execution of the contract in the mofussil would nullify the whole system of private recruiting.

MR. MONEY said, that by the amendment proposed twenty was the number of laborers that might be taken by a garden sirdar before the Magistrate for registry and execution of the contract, and that number was already laid down by Section 14 and subsequent Sections. But he (Mr. Money) confessed he was unable to understand the ground on which the limit was restricted to twenty. As he understood it, the only reason for imposing any limit was one based on sanitary considerations; it was supposed that the garden sirdar was an ignorant person, and would not be able to take proper charge of more than a certain number, and therefore that the number should be limited. It would follow that, if, according to the opinion of Hon'ble Members, a garden sirdar could only take charge of a certain number, then

the restriction should apply with regard to the whole number of women and laborers. At present under the Bill fifteen women and twenty children might proceed with the sirdar, making a total of fifty or sixty; but if twenty-one or twenty-five able-bodied men wished to accompany the garden sirdar as laborers without women or children, they could not do so. It seemed to him (Mr. Money) that it would be better to limit the number to the number of persons of either sex which should constitute the entire party; and if so—if that principle which he contended for be allowed—it did not appear that there existed sufficient reason to limit the number to twenty. He would, therefore, propose as an amendment that in Section 14, line 3, after the word "engage" should be added the words "or take charge of," and in line 4, that "40" should be substituted for "20," and in line 5, that after the word "inhabitants" should be added the words "male and female." Also, that similar changes should be made in the subsequent Sections of the Bill.

In that case the garden sirdar never would be able to have charge of more than forty native inhabitants, but it would be a matter of indifference to the Government of whom that number was composed.

THE ADVOCATE-GENERAL said, with reference to what fell from the Hon'ble Member opposite (Mr. Money), he thought they were getting beyond the object under discussion. It seemed to him that the question as to the necessity of putting some check on the total number of souls, whether laborers or not, who were to be under charge of a garden sirdar not having the powers or authority of a recruiter, ought to be considered hereafter; and the proper mode of dealing with that would be to make some addition to the 53rd Section of the Bill, which had reference to the accompanying wives and children and relatives. There we might insert a proviso that no garden sirdar who was not authorized to engage more than 20 laborers should be at liberty to convey any party of more than 40 persons altogether: the matter seemed rather beyond the present question, which was the terms on which laborers proper were to be engaged, and it was that which he (the Advocate General) should wish the Council to consider at present.

MR. MONEY then, with the leave of the Council, withdrew his amendment.

On the motion of the Advocate-General slight amendments were made in Section 16.

The postponed Sections 11, 12, and 13 were agreed to.

After some conversation, the Advocate-General moved the introduction of the following Sections after Section 17, leaving it optional with the garden sirdar to have the contract executed before the Magistrate of the recruiting district or the Superintendent of Labor Transport at Calcutta:—

"XVIIA.—Every garden sirdar authorized to engage not more than twenty native inhabitants shall bring each native inhabitant engaged by him before the Magistrate of the District, or in charge of a Sub-division of the District in which the engagement took place, or before some Officer specially authorized in that behalf, or before the Superintendent of Labor Transport at Calcutta, and shall produce his certificate to the Magistrate or other Officer, or Superintendent. He shall also state to the Magistrate or other Officer or Superintendent the names of the inhabitants engaged by him, and produce in respect of each the proposed contract according to the provisions of this Act ready for execution. Thereupon the Magistrate or other Officer or Superintendent shall examine each native inhabitant with reference to his proposed contract, and if it appears that he understands its nature as regards the locality, period, and nature of the service, the rate of wages, and the price at which rice is to be supplied, and that he is willing to perform the contract, the Magistrate or other Officer or Superintendent shall register in a book, to be kept in such form as the Lieutenant-Governor shall prescribe, the name of such inhabitant, the place at which it is intended he should embark, and the place at which he is to labor. If the Magistrate or other Officer or Superintendent shall be of opinion that such native inhabitant does not understand the nature of the proposed contract, or that he has been engaged through fraud or misrepresentation, or if the garden sirdar shall not have produced his certificate, the Magistrate or other Officer or Superintendent shall refuse to register the name of such inhabitant: otherwise the Magistrate or other Officer or Superintendent shall cause

such native inhabitant and the garden sirdar to sign the contract in duplicate in his presence, and the contract so signed shall be binding on the garden sirdar's employer.

XVIIB.—The Magistrate or other Officer or Superintendent shall forward a copy of every registration made under the last preceding Section, and one copy of every contract signed as aforesaid and attested by him, to a Magistrate of the District within which the laborer is to labor.

XVIIC.—As soon as possible after the arrival of the garden sirdar with the laborers at the place of disembarkation or at the nearest civil station in the District last mentioned, the garden sirdar shall report himself to the Magistrate of that District, and such Magistrate shall check the number of laborers landed with the number of those registered, and shall report to the Superintendent of Labor Transport at Calcutta, any deaths which may have occurred on the journey. Any garden sirdar who neglects to report himself as aforesaid shall be liable to imprisonment of either description which may extend to three months."

The Sections were agreed to.

The postponed Section 19 was agreed to after a verbal amendment.

The postponed Section 21 was agreed to.

Verbal amendments were made in the postponed Sections 22 and 23, and the further consideration of the Sections was again postponed.

The postponed Section 24 was agreed to.

The consideration of Section 25 was was again postponed.

The postponed Sections 26, 28, and 29, were agreed to.

On the motion of the Advocate-General, verbal amendments were made in Section 30, and the Section was transposed so as to stand immediately before Section 17A.

After some conversation, the postponed Section 32 was agreed to.

The postponed Section 34 was agreed to.

The postponed Section 40 was agreed to after a verbal amendment.

The further consideration of the Bill was postponed.

COURTS OF SESSION.

THE HON'BLE ASHLEY EDEN postponed the motion, which stood in the list of business, for the consideration of the report of the Select Committee on the Bill to empower the Lieutenant-Governor of Bengal to direct Courts of Session to be held in different towns in a district.

The Council was adjourned to Saturday, the 7th August.

Saturday, the 7th August, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Baboo Koomar Satyanund Ghosal,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

IMPROVEMENT OF THE PORT OF CALCUTTA.

THE HON'BLE ASHLEY EDEN moved that the Bill better to provide for the improvement of the Port of Calcutta be passed.

The motion was agreed to, and the Bill passed.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON said the next motion on the paper was that the Bill to amend the procedure in suits between landlords and tenants be passed. He would wish, however, to formally postpone that motion for a short time, and to call the attention of the Council to one or two inaccuracies which appeared in the Bill, chiefly verbal, and probably arising from mistakes of the printer. With the permission of the President he (Mr. Thompson) would, therefore, ask leave to move a few amendments in some of the Sections of the Bill. In the preamble, the "permanently settled" provinces were referred to, but the Council would remember that one of the later Sections of the Bill was amended so as to make

the Bill generally applicable to all the provinces subject to the Lieutenant-Governor of Bengal, leaving it discretionary with the Government to extend the Bill to particular districts as it might think fit. He (Mr. Thompson) would, therefore, move the omission of the words "permanently settled" from the preamble.

The motion was agreed to.

MR. RIVERS THOMPSON then moved the insertion of the words "in whose jurisdiction the lands are situate" after the word "Collector" in the 21st line of Section 14.

The motion was agreed to.

MR. RIVERS THOMPSON also moved the insertion of the same words after the word "Collector" in the 18th line of Section 20.

The motion was agreed to.

MR. RIVERS THOMPSON also moved the correction of two clerical errors in Section 27, namely the substitution of "extortion" for "exaction" in line 6, and the insertion of the words "exercise of the" before "power" in line 17.

The motion was agreed to.

MR. RIVERS THOMPSON further moved, in Section 55, the substitution of the words "signature and seal of such Court" for "signature of the Judge and seal of such Court," and a similar amendment in Section 56. It might lead to misapprehension and confusion if the word "Judge" was retained, where evidently the presiding officer of the Court was intended.

The motion was agreed to.

MR. RIVERS THOMPSON then said that they had incorporated, as regards the sale of under-tenures, the law applicable to such tenures, and had made the Civil Court the authority to hold such sales in execution of decrees. There was, however, a Section in that law Act VIII of 1865 of this Council, which was of some importance, and which he thought had been erroneously omitted from the present Bill. That Section provided that, if at any time before the commencement of the sale the amount of the decree was paid either by the defaulter *or any one interested in the protection of the under-tenure*, the sale should be stayed, and it gave to such person interested in the under-tenure a lien upon it till the amount he had paid in to stay the sale was made good. It was probably thought that the provisions of the Civil Procedure Code were sufficient to meet the case, there being a Section in the Code which allowed certain parties to stay the sale by payment of the amount due. But that Section 245 of the Civil Procedure Code did not go so far as the Section which he would wish to introduce from Act VIII of 1865. He would, therefore, move the introduction, after Section 61, of the following Section taken from Section 6 of the Act above referred to:—

"If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf or any one interested in the protection of the under-tenure, such sale shall not take place, and the provisions of Section XIII of Regulation VIII of 1819 for the recovery of sums paid by persons other than the defaulting holder of the under-tenure, to stay the sale of the under-tenure, shall be applicable to all similar payments made under this Section."

THE ADVOCATE-GENERAL said that he thought it would be correct to introduce this Section, because under the general provisions of Act VIII of 1859 a judgment-debtor might protect himself, but this Section of the Act of 1865 of this Council not only referred to the defaulting holder, but also to any one interested in the protection of the under-tenure, and if such person paid the amount of the decree, the provisions of Regulation VIII of 1819, which was the law applicable generally to putnee tenures, became applicable.

The motion was then agreed to.

On the motion of MR. THOMPSON, an error in printing in Section 98 was corrected.

COURTS OF SESSION.

THE HON'BLE ASHLEY EDEN said that it would perhaps be more convenient to proceed with the motion

which stood in his name for the consideration of the Report of the Select Committee on the Bill to empower the Lieutenant-Governor of Bengal to direct Courts of Session to be held in different towns in a District, as the Bill had been postponed from time to time. Doubts had arisen as to the power of the Council to pass the 2nd Section of the Bill, with regard to the amendment of the Criminal Procedure Code by Act VIII of 1869; but if we confined ourselves to the 1st Section of the Bill, we should be able to pass it without affecting any law. And there was the less objection to this inasmuch as in point of fact the 2nd Section was not necessary, sufficient provision having already been made for the preparation of the Jury List in Section 329 of Act XXV of 1861, which enacted that the Collector of the District, or other Officer exercising the powers of the Collector, should prepare a list of persons residing within ten miles from the place where trials before the Court of Session were held, who were qualified to serve as jurors or assessors. At present the Collector prepared only one list for the District, because Sessions were only held in one place; but as under the 1st Section of this Bill there would be several places in which Sessions would be legally held in a District, the existing law did really provide ample means for subsidiary Jury Lists. He would, therefore, move that the Report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to, and so also was Section 1.

Section 2 having been read by the President:—

THE ADVOCATE-GENERAL said that he quite approved of the omission of the 2nd Section of the Bill, which appeared unnecessary. As he understood the 329th Section of the Code of Criminal Procedure (he was not now referring to the amending Act of the present year,) the local Government might fix the distance from the place of holding Courts of Session within which Jury Lists were to be prepared; it was either to be a distance of ten miles, or any other distance, not exceeding ten miles, which might be fixed by the local Government, from the place where the Court of Session was held, as the tract of country from which the list of jurors to form the jury was to be made up. Now the present Bill in the 1st Section provided that the Lieutenant-Governor, with the approval of the High Court, might fix a place for holding the Court of Session at somewhere else than the head quarters of the Magistrate of the District or the usual place of sitting of such Court; and therefore, when the Lieutenant-Governor could do that, the jury would necessarily, under the provisions of Section 329 of the Code of Criminal Procedure, be drawn from those persons who resided either within ten miles of the place so fixed or within such less distance as the Lieutenant-Governor might fix. The 2nd Section of the Bill was therefore quite unnecessary, and the application of the 1st Section would in no way raise the doubt which the High Court appeared to have expressed with regard to the Collector not being empowered to make out any other list than the list of jurors of the District: the list prepared for each place at which the Court of Session was held would be temporarily the list of the District.

Section 2 was then omitted, and amendments rendered necessary by the omission of the Section were, on the motion of MR. EDEN, made in the preamble.

The title was then agreed to, and on the motion of MR. EDEN the Bill was passed.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The postponed Section 22 having been read—

THE ADVOCATE-GENERAL said that this Section, even as amended at the last Meeting of the Council, did not provide for the case of garden sirdars, authorized to engage not more than 20 native inhabitants, being allowed to take the men to Calcutta; and as the Section stood, it might look as if it were compelling a garden sirdar, who engaged men beyond the provinces subject to the Lieutenant-Governor of Bengal, to go before the Magistrate of the District in which they first came, without giving him the option of having the registration and execution of the contract effected at Calcutta. He (the Advocate-General) would therefore move the addition to the Section of the following proviso:—

"Provided that such native inhabitant, if engaged under the provisions of Section XVIIA., may be produced by the garden sirdar for registry at Calcutta."

The motion was agreed to, and the Section as amended passed.

The postponed Section 23 having been read—

THE ADVOCATE-GENERAL said that Section 23 provided a penalty for forwarding laborers without having them duly registered on *all* garden sirdars, whether authorized to engage more than 20 native inhabitants or not, even if the place of registration and execution of the contract was Calcutta as provided by Section 17A. He (the Advocate-General) therefore wished to add this proviso to the present Section, to make the position of such garden sirdars as were bringing men down to Calcutta for registration quite safe:—

"Provided always that nothing in this Section contained shall subject to any penalty any garden sirdar not authorized to engage more than 20 native inhabitants, by reason of his accompanying such native inhabitants to or towards Calcutta for the purpose of there entering into a contract in pursuance of Section XVIIA."

The motion was agreed to.

BABOO ISSUR CHUNDER GHOSAL said that he desired to say a few words regarding this Section. It provided a punishment of fifty rupees' fine and one month's imprisonment for forwarding to Calcutta, without registration in the District in which he shall first come, a laborer who had been recruited in a District beyond the provinces under the control of the Lieutenant-Governor of Bengal. Now, instead of this small fine, he found in Section 2 a different punitive provision in regard to persons engaged within the Districts subject to the Lieutenant-Governor. In that Section the fine was extended to a maximum of Rs. 200. Under these circumstances, he would be glad if the learned Advocate-General would inform the Council why a different measure of punishment was provided for the same offence in Section 23—one punishment for offences committed with regard to persons engaged within, and another with regard to persons brought from without the provinces under the control of the Lieutenant-Governor.

THE ADVOCATE-GENERAL said that the Hon'ble Member was under a misapprehension, first, in supposing that the offences provided for in Sections 2 and 23 were the same; and again in thinking that Section 23 applied only to the case of persons recruited in Districts beyond the control of the Lieutenant-Governor. Section 2 was general and applied to *any person* who engaged native inhabitants otherwise than under the provisions of the Act, and Section 23 applied only to contractors, recruiters, and garden sirdars forwarding laborers on their journey without registration. Again, the latter Section was applied to laborers recruited within the Lower Provinces, as well as to laborers brought from beyond those provinces. Therefore, he (the Advocate-General) did not think there was any inconsistency in the two Sections providing different measures of punishment.

The Section as amended was then agreed to.

The postponed Section 25 was agreed to.

THE ADVOCATE-GENERAL moved the introduction of the following Section after Section 25:—

"XXVA.—It shall not be lawful for two or more garden sirdars not authorized to engage more than 20 native inhabitants to proceed together towards any of the said Districts accompanied by such laborers, unless the total number of laborers engaged by both or all such garden sirdars shall not exceed 20. Any garden sirdar who shall be guilty of any offence against the provisions of this or the preceding Section shall be liable to fine. The provisions of this Section shall not apply during such time as the laborers are conveyed by steamer."

He said that he had intended to propose another Section with regard to fixing the maximum number of women and children and aged relatives who might be permitted to accompany the laborers, but on consideration, and after what the Hon'ble Member opposite (Mr. Money) had said to him, he did not think it was of sufficient importance to require any special restriction, especially as no such persons could accompany the laborers except with the consent of the garden sirdar. Therefore, he (the Advocate-General) would limit the Section to prohibiting combination.

The Section was agreed to.

THE ADVOCATE GENERAL then moved the introduction of the following Section after Section 26:—

"XXVIA.—Any garden sirdar not authorized to engage more than 20 native inhabitants, who shall take such inhabitants to any of the said Districts by land journey, shall provide such inhabitants with proper and sufficient food and lodging, until arrival at the place of labor; and the provisions of the last preceding Section, as regards fines and compensation, shall apply to every case of default by a garden sirdar under this Section."

The Section was agreed to.

THE HON'BLE ASHLEY EDEN moved the introduction of the following Section after Section 29, with the view of assimilating the procedure in regard to laborers recruited by garden sirdars and brought to Calcutta without registry in the District, to the case of laborers recruited in the ordinary course:—

"XXIXA.—If upon the arrival of any laborer engaged by any garden sirdar not authorized to engage more than 20 native inhabitants, it shall appear to the Superintendent that such native inhabitant has suffered any ill-treatment on the journey, the Superintendent may order the garden sirdar by whom such laborer shall have been taken to such place of embarkation, to pay him such sum of money as to the Superintendent shall seem reasonable by way of compensation, or such sum as to the Superintendent shall seem necessary in order to enable such laborer to return to the place where he was engaged, and it shall be lawful to such Superintendent to cancel the contract of such laborer."

The Section was agreed to.

On the motion of MR. EDEN the number "XXIXA." was inserted after the number "XXIX" in line 4 of Section 34.

The postponed Section 44 having been read—

BABOO ISSUR CHUNDER GHOSAL moved certain amendments in the Section, with the object of providing that, when a laborer was detained on the voyage in consequence of having any infectious or contagious disease, the wife or husband, as the case might be, should also be detained.

After some conversation, the motion was negatived, and the Section was agreed to.

The postponed Section 46 was agreed to.

THE HON'BLE ASHLEY EDEN said the Council would see that he had intended to move, after Section 51, the introduction of certain provisions prescribing Rules for the regulation and serving out of provisions to the laborers during their voyage on board steamers and boats; but after consultation with the Advocate-General, it was thought better to substitute a short Section which omitted all details and provided for the passing of Rules by Government, prescribing the diet, &c., and regulating the management of laborers in transit, and he (Mr. Eden) had therefore withdrawn his amendments in favor of those about to be moved by the Advocate-General.

THE ADVOCATE-GENERAL said, Hon'ble Members had most likely seen a paper which contained the result of a conference between the Superintendent of Labor Transport and certain Contractors and Masters of steamers. It seemed that very opposing views were advanced at that meeting with regard

to the question of the issuing of stores to the laborers on the voyage, and the resolution that was come to was a sort of compromise. As, therefore, the matter was one in which different Masters of steamers differed materially (some Masters thinking that they had enough to do to attend to the navigation and management of their vessels), it seemed to him (the Advocate-General) better that any legislative provisions on the matter should be left as general and elastic as possible; and that all points of detail should be left to be provided for by rules to be prescribed by the Lieutenant-Governor. If the Bill dealt with details, it was very possible that experience might soon show that a change was required, and that it was expedient to adopt another system of control than that provided by the Bill. Therefore, it seemed better to substitute something shorter than the provisions proposed by the Hon'ble Member, and to refer the whole thing to Rules to be passed by the Lieutenant-Governor. He (the Advocate-General) would therefore move the introduction of the following Sections after Section 51:—

"LIA.—It shall be lawful for the Lieutenant-Governor to make Rules, prescribing the diet, clothing, medical attendance, and management of laborers in transit, for regulating the control and issue of stores, and for the control of all officers, cooks, and attendants on board any steamer or boat under the provisions of Section LII. The said Lieutenant-Governor may from time to time alter, vary, and revoke such Rules; and when and so soon as such Rules shall have been published in the *Calcutta Gazette*, all diet, clothing, medical attendance, and management provided for such laborers which may not be in accordance with the terms of the Rules which for the time being may be in force, shall be deemed not to be proper nor sufficient.

"LIB.—Every Master of a steamer, or medical officer in charge of laborers on board of any boat carrying laborers, who shall wilfully and knowingly neglect or refuse to enforce on board of such steamer or boat such Rules as may from time to time be prescribed by the Lieutenant-Governor as aforesaid, shall be liable to fine.

"LIC.—Any offence against any of the provisions of this Act, or any Rule to be passed as aforesaid, committed on board of any steamer or boat, may be tried by any Magistrate exercising jurisdiction in any place at which any laborers may have embarked on board such steamer or boat, or may have disembarked from such steamer or boat."

The motion was agreed to.

The postponed Section 52 was agreed to after verbal amendments.

The postponed Section 53, which provided that the provisions of certain Sections of the Bill should apply to the women, children, and aged relatives accompanying laborers, having been read—

THE ADVOCATE-GENERAL moved the insertion of the numbers "28, 29, and 29A." after "26" in line 4.

MR. MONEY said he had been unable to see how, as was asserted, Section 53 provided for the family of a detained laborer remaining with him. By Section 44, if a laborer was found to be infected with an infectious or contagious disease, the medical officer examining the laborers on their journey might detain him. Section 53 extended this provision to women, children, &c., not under engagement. He (Mr. Money) was at a loss to know how that would allow the women, children, and aged relatives accompanying him to be kept back because the head of the family was kept back. Again, if the wife of a laborer were kept back, how would that enable the authorities to detain the husband also. Moreover, if the wife of a laborer was herself under engagement as a laborer, she would not come under the provisions of Section 53 at all.

THE ADVOCATE-GENERAL said that he thought they were getting a little too far. It might be very unfortunate for the family of the laborer that the wife and husband should be separated, though only for a time; but he (the Advocate-General) was at a loss to know why the employer or owner should be deprived of the services of both the husband and wife at the same time. He must, therefore, oppose any suggestion which would add more in this direction than what had already been done.

MR. MONEY said he would allow that at first sight it seemed unfair that the wife should be detained in consequence of the illness of the husband, but any

one who knew anything of the habits of the natives would admit that it would be to them a most grievous hardship to be separated under such circumstances. He thought that when the woman entered into a contract, the liability to such separation should be explained to her; for then no woman whatever would enter into an engagement. He thought the hardship of such a case ought to be provided against.

Mr. KNOWLES said he agreed with the Hon'ble Member that a wife and husband ought not to be separated: as far as he personally was concerned, he should always agree to their remaining together.

BABOO PEARY CHAND MITTRA said that from what he knew of the habits of the people of the country, he did not think that in the case of illness the husband or wife would like to be separated. As a matter of fact, if the husband fell ill, the wife would not go on, even on compulsion, and this would take place in most cases.

THE PRESIDENT said that his only doubt was whether we were not going too far to meet every possible case by legislation. He did not think there would be any possibility whatever of doing so: it would be excessive legislation.

BABOO ISSUR CHUNDER GHOSAL then moved the insertion of the numbers 40, 41, and 42, before the number 44.

After some conversation, the motion was negatived, and the further consideration of the Section was postponed.

THE ADVOCATE-GENERAL moved the omission of the postponed Sections 56 to 59, as they had been rendered unnecessary by the provision by which the contracts of laborers, when recruited by garden sirdars not authorrized to engage more than 20 laborers, were registered and executed in Calcutta.

The motion was agreed to.

The postponed Section 61 provided that on the complaint of a laborer, the Inspector might submit to the revision of a Committee the schedule of tasks framed by any employer.

THE ADVOCATE-GENERAL moved amendments which would enable the Inspector to take action in the matter at any time on his own motion; he said that a laborer might not complain through fear of his employer, or through pure ignorance.

MR. SUTHERLAND thought that the proposed change in the Section would give the Inspector a great deal of power: it would place too much discretion in the hands of one man, and would enable an Inspector, if so inclined, to harass an employer.

THE PRESIDENT thought that in such a case it would be very easy for an Inspector to be troublesome: he had only to ask a laborer whether the schedule of tasks was a fair one, in order to be furnished with a complaint.

The motion was then agreed to, and the Section as amended passed.

The postponed Section 63 was agreed to.

On the motion of the Advocate-General a verbal amendment was made in the postponed Section 65.

BABOO ISSUR CHUNDER GHOSAL said that this Section only gave power to the laborer to recover arrears of wages not exceeding four months: he did not see why the laborer should not be allowed to recover arrears exceeding four months. He would, therefore, move the omission of the proviso at the end of the Section.

THE ADVOCATE-GENERAL said it seemed to him very unfortunate that Hon'ble Members proposed specific amendments in particular Sections without considering the Bill as a whole. The simple reason why the proviso was introduced was that under Section 95 it was optional with the laborer to recover wages for 2 months; and under Section 96 he might release himself from his contract altogether if his wages were in arrears for four months. Section 65, therefore, provided that no greater amount than four months' arrears of wages should be recovered.

The motion was negatived, and the Section as amended was agreed to.

THE ADVOCATE-GENERAL moved the omission of Sections 66 and 67 and the substitution of the following:—

"Whenever any laborers shall be employed in any of the said Districts, there shall be

provided for them sufficient and proper house accommodation, water-supply, sanitary arrangements, and rice."

The motion was agreed to.

THE ADVOCATE-GENERAL moved the substitution of the word "rice" for "provisions" in lines 5 and 10 of Section 68.

The motion was agreed to, and the Section as amended passed.

THE ADVOCATE-GENERAL moved the introduction of the following Sections after Section 68. He said, the Council would observe that since the amendments were circulated, he had at the instance of an Hon'ble Member, made the conviction for the non-provision of house accommodation, &c., dependent upon proof of gross neglect:—

"LXVIIIA.—It shall be lawful for any Inspector, or Assistant-Inspector who is himself a Magistrate, to institute within his jurisdiction, on the lands in charge of any employer, or at some place within his jurisdiction, not more than 10 miles distant from such lands, an enquiry whether such employer has provided for his laborers sufficient and proper house accommodation, water-supply, sanitary arrangements, or rice. On the complaint of any Inspector or Assistant-Inspector, a similar enquiry may be made by any Magistrate. Any such enquiry, whether conducted by an Inspector or Assistant-Inspector, or before a Magistrate on the complaint of an Inspector or Assistant-Inspector, shall be dealt with and conducted as a case triable by a Magistrate under the Criminal Procedure Code."

"LXVIIIB.—If the employer is convicted of gross neglect in not having provided sufficient and proper house accommodation, water-supply, sanitary arrangements, or rice, such employer shall be liable to a fine not exceding five hundred rupees, and may also be ordered by the convicting Magistrate to provide the proper or sufficient house accommodation, water-supply, sanitary arrangements, or rice. If the employer wilfully omits to comply with such order, he shall be liable to a fine not exceeding one hundred rupees a day for every day that such omission continues. In default of payment by the employer of the last mentioned fine, the person on whose account such employer has been acting shall be liable to pay the fine."

THE PRESIDENT said he thought it should be competent to the Inspector or Magistrate to order sufficient house accommodation, water-supply, and sanitary arrangements without having first convicted the employer of not having provided them. What he objected to was that a conviction for gross neglect would, under the proposed Section, be a necessary preliminary before the Magistrate could order the employer to provide what was requisite. In nine cases out of ten the employer would never be convicted of gross neglect.

MR. KNOWLES said, his reason for proposing the introduction of the words "gross neglect" was that the Inspector might not be able in trivial cases to impose a fine of Rs. 100 per day. Besides, what did the words "sanitary arrangements" mean? Did they mean the position of the laborers' huts? And if the planter did not take down the huts and erect them according to the wishes of the planter, was the planter liable to fine if he did not obey the orders of the Inspector?

MR. SUTHERLAND said that, in confirmation of what had been advanced by the Hon'ble Member who spoke last, he would point out that in this matter the Inspector or Magistrate was both prosecutor and judge, and the adjudication of the question as to whether proper sanitary arrangements had been provided, was left entirely to him. If the term "sanitary arrangements" were properly defined, it would meet the whole objection; the Inspector might have his own ideas, and the planter his own.

THE PRESIDENT said there was no doubt that the Government would make reasonable rules on the subject, and the rules so made would be published. Those rules, he hoped, would be so accurately drawn, that there would be no room left for arbitrary proceedings.

MR. SUTHERLAND thought that this was a matter which should be left to the decision of a Committee of neighbouring planters.

THE ADVOCATE-GENERAL said, if the provisions of Section 68 were properly carried out, and the power which the same Section gave of from time to time altering, varying, and revoking the rules, was duly exercised, he could not help thinking that any arbitrary exercise and malicious feeling on the part of the Inspector was

hardly to be feared at all. He apprehended that it would be very easy indeed to lay down the proper nature of what was to be supplied, and that it would not, therefore, be left to the discretion of the Inspector, even if he was acting as a Magistrate, and still less if he brought his complaint before a Magistrate. Therefore, it would be a useless incumbrance to add the intervention of a Committee who would, in fact, be sitting in judgment on the rules, or at any rate would be determining whether or not those Rules were sufficiently complied with. He (the Advocate-General) apprehended that the action of the Inspectors should not be encumbered.

MR. SUTHERLAND said, the rules could not possibly embrace directions as to the location of coolie lines; he thought that was a very fitting subject for the arbitration of a committee.

THE HON'BLE ASHLEY EDEN said that it appeared to him that undue alarm had arisen from the notion of the Inspector being prosecutor and judge in the same case. But it must be recollected that the Inspector was not acting in a matter in which he had any self-interest; he was performing a simple duty, and was sent to see if things were being done according to law, and if he found they were not, he had power at once to adjudge a proper penalty. It was the fashion just now to talk a great deal of the evil of combining executive and judicial functions, but he (Mr. Eden) was satisfied that a great deal more substantial justice was done under the old state of things under which a Magistrate went to the spot, enquired into a case, and disposed of it then and there. That was a form of procedure quite in accordance with the notions of people in this country, and in measures was certainly effective. In no class of cases was this mode of action more suited than in these, where an experienced Inspector, having the matter thoroughly at his fingers' ends, came and decided face to face with both parties, whether the sanitary arrangements were such as the law contemplated.

THE PRESIDENT said, his answer to the question put was that the question as to the location of the lines would not come under what was generally understood as sanitary arrangements, nor under the term house accommodation. He did not think that the situation of laborers' huts would come under this Section at all. Where the planter placed his lines in a situation decidedly unhealthy and injurious to the laborers, if they were not removed on the order of the Inspector, the provision of Section 107 would apply, and that Section referred to places unfit for human habitation. A case of the kind had in fact arisen in Cachar, which was dealt with under the Section to which he had referred, and under that Section a committee, of which the Magistrate of the District was a member, had to determine upon the point.

THE ADVOCATE-GENERAL said that, in consequence of what had fallen from the President of the Council, he would beg leave to amend the second of the proposed Section so as to make it stand thus:—

"If the employer is convicted of gross neglect in not having provided sufficient and proper house accommodation, water-supply, sanitary arrangements, or rice, such employer shall be liable to a fine not exceeding five hundred Rupees. In any case where proper and sufficient house accommodation, water-supply, sanitary arrangements, or rice, shall be found not to have been provided, the employer may be ordered by the convicting Magistrate to provide such proper and sufficient house accommodation, water-supply, sanitary arrangements, or rice. If the employer wilfully omits to comply with such order, he shall be liable to a fine not exceeding one hundred Rupees a day for every day that such omission continues. In default of payment by the employer of the last mentioned fine, the person on whose account such employer has been acting shall be liable to pay the fine."

The motion was then agreed to.

The postponed Section 69 was agreed to after an amendment.

The postponed Sections 88 and 89 having been read—

THE ADVOCATE-GENERAL said, he would move the omission of these Sections, and the substitution in their stead of the following Section which, in point of order, would most convenient-

ly come quite at the end of the Bill after Section 112 :—

"Whenever a laborer shall have completed his contract by service, or whenever his contract shall have been duly cancelled under the provisions of this Act, such laborer may enter into a new contract or agreement with any employer on such terms and conditions as may be mutually agreed on. Provided always that so long as any laborer shall continue to serve in any of the said Districts, and notwithstanding any terms or conditions of the contract or agreement under which the laborer shall be serving, the provisions of this Act contained in Sections LXV to LXVIII both inclusive, and in Sections LXX to XCVI both inclusive, but excepting Section LXXXVI, and in Sections CVI to CXII, shall apply to the laborer and his employer, and to the contract or agreement, whether in writing or verbal, under which the laborer may for the time being be serving."

He said, as this alteration related to the question of re-engaged laborers on which great contrariety of opinion existed out of doors, and on which views opposed to his had been forcibly expressed by those competent to form an opinion on the subject, he should make no apology for entering at some length into the question. It seemed to be considered in various quarters that anything in the shape of restrictions and the application of the protective provisions of the Act to laborers acclimatised, and used to the particular species of labor by having performed their contracts, was opposed to free trade in labor, and an unnecessary interference on the part of the legislature; and it seemed to be treated as if the proposal that re-engaged laborers should be subject in any way to the provisions of the Act, was entirely a new thing. It must be abundantly clear to any one acquainted with the course of legislation on this subject, that this was no new proposition. At any rate, in so far as Sections 88 and 89, as they stood, or in so far as the Section which he proposed to substitute for them was concerned, it was the introduction, not of any novelty, but of the relaxation of what, at any rate, had for the last four years been the intention of the legislature with regard to these re-engaged persons; because it was to be remembered that in the Act of 1865 there was the following provision in the 25th Section:

"Every laborer, the completion of whose contract or whose release therefrom shall have been registered, shall be entitled to enter into a fresh contract before the District Magistrate in the manner prescribed in Section 19 of the said Act III of 1863 for contracts entered into before the Superintendent of Labor Transport, and in case of his entering into such fresh contract, all the provisions of this Act and of the said Act III of 1863, shall apply thereto."

Whether or not the language of that Section did prevent re-engagement in the case of laborers who had performed or been released from their contracts in any other form, might be a subject of doubt, but this much was certain, that the intention of the legislature was to prohibit the re-engagement of time-expired laborers in any other form than by contract under the Act, which would bring them under the provisions of the law. In 1867, when this Bill was before the Council, it was thought that it might be desirable to alter what had been intended to be the law as regards re-engagements, and to leave the form of re-engagement perfectly free; and accordingly the Bill of 1867 passed through the Council containing clauses to that effect. Then it was discovered that the provisions of the Act of 1865 had, in more than one instance, been to a great extent practically evaded by procuring laborers to release themselves from their contracts and immediately taking contracts from them under the Contract Act XIII of 1859, and, consequently, he (the Advocate-General) was led to frame Sections 88 and 89 of the present Bill in the form in which they now stood; and under those Sections all the provisions of the Act respecting the contracts of laborers would apply to any new contract or re-engagement, and the new contract would have to be entered into before a Magistrate in the same way as the original contract before the Superintendent of Labor Transport. Now it was represented to him (the Advocate-General) on very competent authority, that as regards Cachar, and perhaps Assam, if every new contract with a laborer after the completion of the laborer's contract had to be registered before the Magistrate, it would practi-

cally render it impossible for the employer to engage any of such men, because as a matter of practice the great majority of applications for re-engagement were made at a time when it was absolutely essential that the employer should be day and night at his factory. That appeared to be the practical obstacle to the registration of contracts, and to that he (the Advocate-General) had given way. What he proposed to substitute did away with the necessity of any registration before the Magistrate; it left the terms of the new contract perfectly free, but it imposed on the employer certain duties: in fact, during so long as the laborers should be serving in any part of these districts, the benefit of and liability to the provisions of the Act, so far as regards contracts being a charge on the land, so far as regards the necessity of employers or owners providing proper and sufficient house accommodation, water-supply, sanitary arrangements, and rice, and so far as regards the action of the Inspector and the power of making complaints, and the consequent remedies thereon, would still continue.

He (the Advocate-General) could not but think, notwithstanding a good deal he had heard and that had been addressed to him in writing, that it was a fallacy to suppose that protection to the extent and in the sense of the provision which he proposed to introduce in the Bill in the case of re-engaged laborers, was necessary in regard to the service under contract which might extend to three years, but was not necessary in regard to a re-engagement which might only extend to one year. Was it to be supposed that the laborer had not merely become so acquainted with the nature of the service and the character of his employer that he could protect his own interest, but that his residence for a period of three years in a wholly foreign district should enable him to protect himself against the chances of mortality, the risks of bad accommodation, bad water-supply, and every thing of that kind? Such an assumption seemed quite out of the question. Periodical returns would have to be made. The Report of the Commission of 1868 showed that, although, as one might have anticipated, the mortality, which at the time had been so very alarming, was undoubtedly greatest at the commencement of the service from the effects of the journey, and of the new climate, it had never entirely, or anything like entirely, disappeared as the service continued. From the returns, there was great reason for still coming to the conclusion that the protection of the laborer, not as regards the terms of his contract, but from the bad influences of the climate and all the results of neglect and bad treatment should be continued, and to that extent he should be brought under the provisions of the Act. It was a strange circumstance that some who were opposed *in toto* to the notion of applying any part of this Act to the case of re-engaged coolies, entertained an equally strong opinion in favor of laborers being engaged for five years, instead of three, under the provisions of the Act in all respects. The suggestion that they should be allowed to contract for five years under the Act, seemed an implied admission of the strongest kind, that the application of the Act in its integrity for five years would be very desirable. Now that showed conclusively that the maximum of three years was not considered sufficient to put the laborer in a position to meet the risks and chances of an unhealthy district, and to require no further protection. He (the Advocate-General) could not go along with those views; and as to the objections raised that provisions of this kind were opposed to the principle of free trade in labor, he must repeat what he said in 1863 and 1865, that the Council, in dealing with this question at all, were necessarily dealing with an exceptional state of things. The principle of free trade in labor was a general principle with which he should be the last unnecessarily to interfere; but the very foundation of the first legislation on this subject was the existence of a very exceptional and peculiar state of things to which that general principle was not

The Advocate-General.

applicable—a system by which the laborer was carried from a great distance, and placed amongst persons wholly foreign in race, experience of climate, and habits; therefore, he (the Advocate-General) could not go further than he had done in the Section proposed, which would leave the employer and the laborer perfect liberty of action as regards the form of contract, but would give the laborer protection to the extent explained.

BABOO PEARY CHAND MITTRA said, he believed that as yet we had no correct information as to evil having resulted from allowing time-expired coolies to re-engage on their own terms, and the very fact of large numbers having done so, was against the inference that evil had resulted. He could understand that, up to a certain point, the provisions of the law ought to be enforced as regards the execution and registration of contracts and the like; but after some years, when the employer and laborer understood each other, and the laborer wished to enter into *de novo* engagements on their own terms, liberty ought to be given to them in doing so, and the laborer ought to be treated as a free agent. As far as he (Baboo Peary Chand Mittra) could understand the learned Advocate-General, he thought the Section proposed to be substituted by him was an improvement on the Section in the Bill, as it dispensed with the registration of contracts, which was attended with unnecessary trouble and expense.

MR. SUTHERLAND said that he could not agree with the learned Advocate-General in his view of the new Section which he had proposed in substitution of Sections 88 and 89. He (Mr. Sutherland) had had the opportunity, before the Council met, of stating to His Honor the President and the learned Advocate-General his objections to this Section, and he feared that he could not now say anything new on the subject. With reference to what the Advocate-General stated, that this Section was a novelty simply so far that it was a re-assertion of the state of matters enjoined under the existing law, he (Mr. Sutherland) would observe that Section 25 of Act VI of 1865 only declared that the laborer should be *entitled* to renew his contract, and if he did so, he would be subject to the provisions of the Act. But the Section under discussion, while also leaving free the terms and conditions of the contract, established a perpetual and exceptional state of protection, which would interfere very materially with tea cultivation in Assam and Cachar.

With regard to the supposed inconsistency of advocating the extension of the term of contract, and objecting now to re-engaged coolies continuing subject to the provisions of the law, he would ask the Council to re-call that what he said, a fortnight ago, in favor of the extension of the term of contract, was advocating the five years' term more as an indirect means of settling and peopling the Eastern Provinces, than for any money profit the longer period would give to the planter. He was certain the proposed perpetual extension of the law to time-expired laborers would prevent colonization. In Mr. Edgar's report he stated that in Cachar there were at this moment something like 14,000 imported laborers under the Act, and that there were about 15,000, engaged under local agreement, working free from any of the provisions of Acts III of 1863 and VI of 1865. The Advocate-General had alluded to the reasons which led to the introduction of the Section in the existing law regarding time-expired laborers. It was, as he (Mr. Sutherland) understood it, in consequence of an alleged evasion of the Act in one particular garden that Sections 88 and 89 were framed. He was in a position to state that all the coolies in that garden, with the exception of ten or twenty men, were under engagement under the Acts of 1863 and 1865. He mentioned this because he thought it very strange that legislation embracing such a number of provisions should extend to all the gardens in Assam and Cachar in perpetuity, in consequence of a misconception regarding the state of matters in one plantation.

Though he resisted the introduction of this Section, he did not think that any one would impute to him and the large number of Englishmen interested in tea cultivation (whose opinions on this subject he shared) a selfish disregard of the well-being of the laborers. He maintained that in the particular circumstances, the self-interest of the planter ensured the good treatment of his laborers. Even where partial local labor was procurable, a planter could not depend upon it: the supply was uncertain and desultory. The whole success of the enterprise depended on plucking the leaf when the bushes were in flush, and to do this the planter must have a full force of laborers, and his interest imperatively demanded that these people should be kept in the necessary comfort and health to enable them to do their work. In one garden in which he (Mr. Sutherland) was interested there were 1,500 coolies, 950 under local engagements and about 550 under the Act, the 950 sharing in every respect the advantages of house accommodation, &c. He might be asked what was he fighting for: why resist this Section in these circumstances? His reply would be that he did not see why these provisions should be made compulsory with regard to men who chose to remain and work, but not under the Act, and he thought the learned Advocate-General would admit that that was a reasonable view of the question. He objected to the provision, because it was exceptional and special with regard to one class. Section 109 of this Bill provided for the free emigration of parties of laborers not exceeding twenty. These men, from the simple fact that they had never been under the provisions of Act III of 1863, would not come under the provisions of this law; and he (Mr. Sutherland) would ask why provide special protection for time-expired laborers, and if it were a benefit, deny it to others?

He objected also on the ground of expense, because the rate of one rupee per head was excessive. While on this subject he would say that he was informed that the cost of inspection in Cachar had been so very trifling that a very large surplus had accumulated. But besides and apart from that, he thought the compelling planters to pay a rate for the State protection of laborers settled in the district was unjust and oppressive.

He would ask further what was there in tea planting to make it the subject of such special legislation extending forward indefinitely; for undoubtedly these Acts were exceptional. He contended that the special necessity of these laws had ceased in a very great measure. He laid very great stress on proper transit arrangements; but he went the length to say that it was a hardship that for three years planters should be bound to provide special accommodation, and other benefits for the laborers, many of which were unnecessary. However, he would not seek to disturb the provisions relating to the first contract, but he would strongly urge that after the term of three years the laborers should be put on perfect equality with the local laborers.

He earnestly begged that the Council should pause before making by one wholesale sweep all these provisions applicable to time-expired laborers. That the coolie was entitled to protection he most readily admitted, and it was the bounden duty of Government to afford him such protection; but by the extension of all these clauses we gave the coolie special and exceptional protection. If Government saw cause and desired hereafter to introduce a provision regarding the sanitary arrangements to be supplied to time-expired laborers, he (Mr. Sutherland) would not object, as some Regulations might be necessary in the case of large bodies of men massed together, but he objected most strongly to the extending for all time of a number of inapplicable provisions such as enumerated in the Section which the learned gentleman sought to introduce.

THE HON'BLE ASHLEY EDEN said that he had had the advantage of having seen the communication which had been received by the Advocate-General on the subject, and which had been referred to once or twice, in which it was strongly urged that the extension

of certain Sections of the Act to time-expired laborers should not be made, and he had now again heard from the Hon'ble Member an expression of the greatest apprehension of mischief to the planter, if what was proposed should be carried out; but he had not seen or heard one single tangible objection showing how the extension of the provisions, or of any one particular Section, would work harmfully to the planter. If we looked item by item at the Sections which were proposed to be made applicable to time-expired laborers, we should see that they could not possibly have any ill effect on the interests of the planter. For instance, Sections 65 to 68 were the first of these Sections proposed to be extended. Now these simply provided that contracts for labor and the wages of laborers under contract should be a charge on the estate. He (Mr. Eden) did not see how it could be supposed that the contract going with the land could be injurious in the case of time-expired laborers any more than in the case of laborers who had not worked out their original contracts, and there was no doubt that the provision was an equitable one to all parties. Then if we examined the other Sections which it was proposed to extend, it would be found that they related to sanitary arrangements of laborers' lines, house accommodation, medical attendance, water-supply, mortality returns, and the like,—provisions as applicable to the case of old laborers as new ones.

The Hon'ble Member opposite (Mr. Sutherland) seemed to fear that we were introduing some new provisions regulating the terms of contracts; but this was not the case. He (Mr. Eden) agreed with the Advocate-General in saying that the proposed Section was not a fresh piece of legislation. He found that the words used here were identical with the terms of the similar provision in the Act of 1865. The laborer might or might not enter into a fresh contract; there was no attempt to regulate the nature of the contract; but if he entered into a new contract, it would come under all the provisions of the law relating to the protection and inspection of laborers, and their sanitary management. If the Inspector had to go and inspect the laborers under original agreement in any plantation, he (Mr. Eden) did not see what possible harm to the planter could arise if the Inspectors at the same time were allowed to inspect those who had renewed their contracts. His doing so would not bring him oftener to the plantation, if that was what was feared, for at any rate he would have to go to the estate to inspect the laborers serving under their original contracts; and he (Mr. Eden) must say that it seemed to him obvious that if such inspection was necessary with regard to new coolies, it was just as necessary with regard to time-expired laborers. On looking at the evidence of a number of planters taken before the Tea Commissioners, he found that it was admitted generally that though the mortality was naturally greater amongst freshly imported laborers on their first arrival, yet that considerable mortality continued amongst old engaged laborers, and the reason assigned for this invariably was that their lines on the plantation were in unhealthy localities, and that there was an absence of proper sanitary arrangements. Now this clearly showed that the inspection of these localities and the periodical examination of the houses provided for them was necessary thoughout the season in these Districts.

As regards the statement that the continued superintendence of laborers was an unjust interference with labor, he would observe that it was a recognized fact that men placed in such a position were in all countries entitled to protection, for it must be recollected that they were not ordinary laborers working in their villages, but men living on plantations in barracks hundreds of miles away from home, and exposed by the nature of their employment to sickness and mortality. In England even we had Inspectors of Collieries and Factories. The case of agriculturalists in the Sunderbunds and Gorruckpore, to which the Hon'ble Member had alluded, was different; there the laborers were settled down to cultivate lands, they formed their own villages, and, if one

place was unhealthy, they were their own masters and could move to another. In the tea plantations, on the contrary, the laborer was like a soldier in a barrack; he could not go where he liked, but was obliged to accept the position and the accommodation which the planter gave him, however unsuitable or unhealthy it might be. Therefore, until these time-expired men were settled down in regular villages, Government had a right to see that they were properly cared for and sufficiently housed.

As to what had been said of the expense to the planter in having to continue to pay for the time-expired laborer the annual rate of one rupee, in the same manner as for fresh laborers, he (Mr. Eden) would remark that the rate imposed by the Bill was a rate *not exceeding* one rupee per laborer; and the maximum rate would not be levied unless a lower rate were insufficient to meet the necessary expenses. There was no intention to make any profit from this rate, which was formed into a distinct fund, and applied exclusively to the purposes of this Act. Therefore, the greater the number of laborers who fell under the rate, the less would be the incidence per laborer. Suppose, for instance, double or treble the present number of laborers came under the operation of the law, the rate would be distributed and diminished proportionally. He could positively assure the Council that no further sum would be raised than was sufficient for the purposes of the Act. Government had given, he thought, a sufficient guarantee of its intention in this respect by deciding that the expense of providing Inspectors should now be entirely paid by Government, and the only expenses to be provided for were the expense of keeping up the disembarking stations and the establishments of the Superintendents of Labor Transport. So far from there being a surplus, as the hon'ble member had supposed, he (Mr. Eden) believed there had been a loss. Though there was no Inspector in Cachar, and the expenses in that particular district were slight, the fees raised in that district went to the common fund, and provided for landing stages, house accommodation, coolie depôts, and so forth. Therefore, really, the fact of the inspection in Cachar having hitherto been carried on without an Inspector by the Magistrate of the district, was no proof that the rate levied was more than was necessary. It was all the same to Government whether the rate which was levied was raised from a greater or less number of men. That was a matter for the planter to consider. He thought, himself, that it was to the advantage of the planter that it should be divided over all the laborers, old and new, and it would then fall less heavily on a young garden struggling for existence, and would be partly borne by the old established gardens which were better able to meet the cost.

MR. MONEY said that he had intended at first to oppose the new Section before the Council, as it extended to time-expired men who re-engaged, the provisions of certain Sections which in their case he thought not properly applicable. Of the four Sections to which he objected three had now been removed; *viz.*, Sections 63, 69, and 86. The only Section not removed to which he objected was Section 76, which imposed the payment of a rate not exceeding one rupee for these time-expired men. It had been said by the Hon'ble Member on his right (Mr. Eden) that the amount raised by the imposition of the rate went not only to pay for the expenses in Assam and Cachar, but also for the expenses of the establishments of the Superintendents of Labor Transport at Calcutta and Kooshtea. It appeared quite clear to him (Mr. Money) that the men re-engaging in the Eastern Districts could not properly be called upon to pay for these expenses. Another reason given why the rate imposed by the law should be paid as well for the time-expired laborer as the others was, that, practically, it would not fall on the planter more heavily than if they were excluded, because if there were a larger number, the incidence of the rate on each laborer would be less. This seemed to him (Mr. Money) a fallacious argument.

In the case of two planters, one having newly imported laborers, and the other time-expired men, there seemed to exist no good reason why the latter should pay in order that the incidence of the rate might fall lightly on the former. He (Mr. Money) was of opinion that Section 76 should be excluded from application to the class of time-expired, re-engaged laborers. As to all the other Sections that were now proposed to be made applicable to them, it appeared to him that they simply related to matters of conservancy and improved police: he could not see any practical or real objection to the extension of them to time-expired laborers, and would, therefore, vote for it.

THE ADVOCATE-GENERAL said that he would make a few observations with reference to what had fallen from the Hon'ble Member on his right (Mr. Sutherland). It seemed to him (the Advocate-General) that the Hon'ble Member had unconsciously himself furnished pretty much the answer to the objections raised to the extension of the proposed Sections of the Bill to re-engaged laborers. It seemed to him (the Advocate-General) that the opposition to the extension of these provisions of the Bill to time-expired laborers could only proceed from one of two causes. First, the parties who opposed the extension of these provisions were confident that it was unnecessary, because all that had been called sanitary arrangements was, and would be, provided (as the Hon'ble Member said it was in the garden in which he was interested) precisely in the same way in the case of time-expired laborers, as in the case of those working under the Act. But, then, it occurred to him (the Advocate-General) to ask how much was it the consequence of the legislation of the last six years, that the present improved state of things existed? and what security was there that if, as soon as any laborer had worked out his contract the provisions of the Act entirely ceased to be applicable to him, so that after the lapse of a greater or less number of years the whole supply of labor would, in fact, consist, or nearly consist, of time-expired laborers—what security was there that the present state of things would continue? He did not wish to be understood as for one moment suggesting any thing in the nature of selfish motives; he had no doubt that to minds like that of the Hon'ble Member and those whom he represented and whose views he had so ably urged to-day, enlightened self-interest was really the motive of their actions; but it required nothing more than experience to say that, however the principle of self-interest might guide those interested as proprietors, nothing in the nature of enlightened principle, but the very reverse, had, in too many instances, guided the proceedings of contractors and recruiters, and still more assistants in charge of the gardens. He (the Advocate-General) thought it was too late now, after the course it had been found necessary to take during the last six years, to suppose that these things could be left to be settled by the principle of enlightened self-interest alone.

The only other conclusion that he could come to as to the principle of the opposition was, that if the same state of things was not to be kept up with regard to time-expired laborers as now required with regard to others, then it was desired *not* to extend the provisions of the Act, with the object that the laborers should not be provided with house accommodation and sanitary arrangements on the same scale as before; and if not, why not? These seemed to be admitted by the Hon'ble Member as things which ought to be done, and which, as far as the garden in which he was concerned, were done; but with regard to those who would wish to adopt any other or different mode of treatment, he (the Advocate-General) had yet to learn why any such different mode of treatment should be followed. The Hon'ble Member had further said that he, himself, thought it was desirable that there should be hospital accommodation provided for time-expired as well as other laborers; but what would be the practical result of requiring proper hospital accommodation and medical comforts, without inspection, which was the sure

practical means of obedience to the law; and it would be more desirable if planters, instead of wanting that these provisions should not apply to re-engaged laborers, should render hospital accommodation as little necessary as possible, by providing such sanitary arrangements as would prevent disease. It seemed perfectly idle to include house and hospital accommodation without inspection.

[MR. SUTHERLAND said that he would not oppose the right of Government to inspect the condition of the laborers.]

THE ADVOCATE-GENERAL resumed—Then the Hon'ble Member was fighting with a shadow: then every thing would be done that ought to be done; and as the law was a terror to them that did evil, and not to them that did well, the extension of the provisions of the law could make no practical difference to those who were well disposed.

With regard to the question of expense, if it was not sufficiently met by what was said by the Hon'ble Member opposite (Mr. Eden), who was best acquainted with the financial view of the question, he (the Advocate-General) should be quite ready to hear any further discussion or proposition for the exclusion of Section 76 from the list of Sections to be made applicable to re-engaged laborers. But subject to any explanation, he confessed he had been at a loss to see what tangible objection there was to the application to re-engaged laborers of all the provisions of the Act referred to in the Section under consideration.

MR. SUTHERLAND said, what he meant to say was that he did not attempt to restrict the right of Government to inspect generally the condition of all laborers, and he would not deny the right of district Officers having access to the gardens for that purpose. But he did not mean "inspection" under this Act. He had already said that Government had not only a right to protect laborers from ill-treatment, but that it was the bounden duty of Government to do so. But he objected to the perpetual application of provisions that were in their nature temporary and exceptional, and intended for laborers recently imported into a new climate, to laborers who had settled down, and who were in every respect better off than they ever were in the land of their birth.

BABOO ISSUR CHUNDER GHOSAL said that after all that had fallen from Hon'ble Members, it would be presumption on his part to say much on the matter; but he thought that as to re-engaged laborers, excepting in the matter of food and house and hospital accommodation, there should be no further interference with them, because three years was a sufficient period to enable the laborer to understand the nature of the service and the character of his employer, and after three years' service he should no longer be kept under the protection of this exception as law, but be allowed to act as a free man.

After some conversation—

MR. SUTHERLAND said that, as regards Setcion 76, he agreed very much with what had fallen from the Hon'ble Member opposite (Mr. Money). But it was to the general *principle* of the Section under discussion that he objected, and he begged the Council to pause before consigning to perpetual leading strings the whole labor of the only European enterprize in the Eastern Provinces. As he had said before, more than half the laborers in Cachar were free from the Acts, and regarding these Mr. Edgar reported:—

> "There were about 15,000 imported laborers working in the District from choice deliberately made, after becoming personally acquainted with the kind of life led on tea gardens, and with the work to be done in them. The majority of these laborers mean to settle in this District."

He (Mr. Sutherland) would ask the Advocate-General if he designed the Section to apply to these people?

THE ADVOCATE-GENERAL said that the Section would not apply to the laborers referred to by the Hon'ble Member: it would only apply to laborers who had been taken up under contract, and whose contracts should not

have been completed at the date of the passing of the Act.

Mr. SUTHERLAND said that he would point out the inconsistency of this sort of legislation. The 15,000 people now in Cachar were free, and had been so for years; but all laborers whose contracts expired after the passing of this Act would be perpetually placed under its provisions. He simply stated this to show the anomaly which would exist if this Section were passed.

The further consideration of the Section and of the Bill was then postponed.

The Council was adjourned to Saturday, the 14th Instant.

Saturday, the 14th August, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General*,
The Hon'ble Ashley Eden,
A. Money, Esq.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Baboo Issur Chunder Ghosal, and
Baboo Chundermohun Chatterjee.

SUITS BETWEEN LANDLORDS AND TENANTS.

MR. RIVERS THOMPSON said that, before moving the passing of the Bill to amend the law relating to suits between landlords and tenants, he had one or two slight amendments to move. The definition of the word "Collector" in Section 1 would not include Officers in the Non-Regulation Provinces who discharged the functions of a Collector, but were called Deputy and Assistant Commissioners. He would therefore move to add the words—

"or other Officer exercising the powers of a Collector of a District or of a Deputy Collector in charge of a Sub-division by whatever designation such Officer may be called."

The motion was agreed to.

A verbal amendment was also, on the motion of Mr. Thompson, made in Section 63, and the Bill was then passed.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein, be further considered in order to the settlement of the Clauses of the Bill.

The motion was agreed to.

MR. MONEY said that he would now bring forward the motion which stood in his name for the introduction of the following Section after Section 49:—

"Provided that when a laborer may remain behind or be detained under the provisions of Sections XXVIII, XLIV, XLVI, or XLVII, or may be further conveyed under the provisions of Section XLIX, it shall be optional with the wife or husband of such laborer, as the case may be, to remain with the laborer so remaining behind or detained, or to be taken forward along with the laborer so further conveyed, whether such wife or husband have contracted to work for hire in any of the said Districts or not. If there are any children they shall also be allowed to remain."

He had very little to say in addition to what he had said on the subject at the last Meeting of the Council. His object in moving the introduction of the Section was the same as that of the mover of another amendment last Saturday, namely, to prevent the separation of husband and wife in a family going up together to the tea districts. As a general rule, the person in charge of laborers would probably be willing, in case of the sickness of a husband or wife, that they should remain back together. But there might be cases in which this result would not be secured, and, therefore, he (Mr. Money) thought it advisable to secure it by law. There was scarcely an Englishman or an Englishwoman who could realize the hardship to a native woman of separating her from her husband: the help-

lessness of a native woman separated in this manner was so complete that only persons who had seen a great deal of the people of this country could form any conception of it. It had been urged that if the woman had herself entered into an engagement, it was scarcely fair to the employer to permit her to stay back in consequence of the illness of her husband. Theoretically that objection was unanswerable, but in legislating in a foreign country we must take into consideration the feelings of the people as well as the legal and logical aspects of a question; and he (Mr. Money) was convinced that no planter would for a moment look to his own interest in such a matter, and desire the separation of husband and wife. The Council would observe that an addition had been made to the Section to meet the case of children.

THE ADVOCATE-GENERAL said he thought that the addition of the words regarding children would be unnecessary, because the legal necessity of the Section arose in consequence of its often happening that the wife herself was under contract to labor; otherwise it would be perfectly optional for the wife to remain with her husband. But he (the Advocate-General) did not think it would be necessary to make any reference to children, and he did not suppose that there would be any difficulty in that respect; children could not be under contract.

MR. MONEY explained that it had been suggested to him that a grown up daughter might also be under contract to serve, and in such a case it would obviously be desirable that she should be permitted to remain with her parents.

BABOO PEARY CHAND MITTRA observed that the word "children" might not be clearly understood. Did it include grown up children, as well as children under age?

THE ADVOCATE-GENERAL said that the word "children" would mean children of the laborer. The Magistrate would not consider it necessary to allow a grown up son under contract to remain with his parents; a daughter, or young children, ought to remain too.

The motion was then agreed to.

THE ADVOCATE-GENERAL said that it would be expedient to go back to the Section which he proposed to substitute for Sections 88 and 89 with regard to time-expired laborers. At the conclusion of the adjourned discussion on the proposed Section he stated, in answer to a question of the Hon'ble Member on his right (Mr. Sutherland), that the Section as it was then proposed would not apply to such time-expired laborers as having been originally under the Acts of 1863 and 1865 had completed their contracts at the time when this Bill came into operation. It was then his (the Advocate-General's) opinion that the Section need not apply to those laborers—a very large body of men. But as would be seen from another Section which he had since proposed to substitute for that which was then the subject of discussion, he now thought, and he had no hesitation in saying, that although the Section which the Council had hitherto been discussing would not have that application, he saw no reason why the extension of the Bill, so far as he proposed it, should not include a body of laborers whose contracts under the existing law had already expired; and, on the other hand, he saw good reason why it should. With that view he now proposed to substitute for the Section which the Council were discussing, the following, which he would read now in order to explain what its effect would be:—

"In all cases where any laborer shall, under the provisions of the said Act III of 1863, or of the said Act VI of 1865, have been, or under the provisions of this Act shall be, conveyed to any of the said Districts for the purpose of laboring there for hire, such laborer and his employer for the time being, and the contract under which for the time being such laborer shall be serving (whether entered into under either of the said Acts or this Act, or otherwise) shall, notwithstanding anything in the contract contained to the contrary, be subject to the provisions of this Act contained in Sections LXVI to LXVIIIB,

both inclusive; Sections LXX to LXXV, both inclusive; and Sections LXXIX to CXII, both inclusive, but excepting Section LXXXVI."

After he had witnessed the unanimity and readiness with which the several Sections of this Bill, having for their object the protection and health and well-being of the laborers, had been received, he believed they would experience no difficulty in coming to a conclusion on the subject. He should commence by saying that he entirely exonerated those Honorable Members who took a different view to what he did, from any motive of a selfish character; that was to say, any motive which would put the interest of employers in a higher or more important light than that of the laborers. Why he thought there was no reason why certain provisions of the Bill should not be extended to those who were already serving after the expiration of their contracts was this. In point of principle he did not see what distinction there could be between applying part of the provisions of the Bill to coolies who were at present laborers not subject to the provisions of the existing Acts, and applying part of the provisions of those Acts to those who were laboring under contracts which had been entered into before those Acts came into operation. Observe what the course of legislation had been. After the passing of the Act of 1863, all contracts which were entered into subsequently to that date were entered into subject to the provisions of that Act; and when the subject was taken up again in 1865, with one exception, the whole Act was extended to the case of all those laborers who were at that time serving under contracts entered into previously to the passing of the Act. He had been looking through the Proceedings of the Council when the Act of 1865 was under discussion, and he found that no special objection whatever had been taken to the retrospective extension of the provisions of the Act to laborers who at the time they entered into then existing contracts were not in any way entitled to any such additional protection. The only Section of the Act of 1865 which in its application was not retrospectively extended to the then existing contracts was the Section which provided the maximum hours of labor and minimum rate of wages. It was considered, and rightly considered, that those were matters which strictly bore on the terms of the contract, and that it would not be fair to affect the terms of existing contracts. That Section, therefore, was modified so as only to apply to contracts entered into after the passing of the Act. But with regard to the whole system of protectorship, as it was then called, and the provisions regarding the redress of complaints and remedies as to desertion, the Act was unanimously extended to all then existing contracts. The same principle was unanimously adopted by the Council which discussed, and discussed at such great length, the Bill of 1867, which Bill was most carefully considered and most fully acceded to by a gentlemen of great acuteness and experience, who had more than once expressed a strong opinion with regard to the subject now more immediately under discussion. In that Bill, also, it was proposed to extend what substantially were precisely the same provisions with regard to inspection, house accommodation, and water-supply, to contracts entered into previously to the time of the passing of the Bill. Considering what the course of legislation had been on the subject, and considering that there never seemed to have been any difference of opinion with regard to this matter, he (the Advocate-General) did not see in point of principle what distinction there could be between applying certain provisions of the present Bill to laborers serving under new contracts, and applying the provisions of the Bill to laborers who were serving under contracts entered into under the provisions of the existing Acts. Further, still merely dealing with the negative part of the question, he saw no reason why the Bill should not be made as far as practicable homogeneous with the existing law. What had been advanced in favor of a change

would lead to some difficulty and some awkwardness by making a distinction between those who were subject to inspection and those who were not.

On the other hand, the reason why he thought that certain provisions of this Bill should be extended to the contracts of time-expired laborers was this. The argument seemed to be, as he understood it, that it was a necessity, perhaps an undesirable necessity, but still a necessity under the exceptional circumstances of the case, that laborers brought from what he might call another country, another climate, under totally new conditions as regards labor, food, and every thing of that kind, should receive all reasonable protection, and should be regarded for three years as under a sort of experimental treatment. But it was urged that, having served out that period, the laborer was to be taken so far to have acquired the character of a free agent, that he was so acquainted with the circumstances of his position, with the suitability of the labor to his capacity, and with the suitability of the climate to his health, as to be a person who might be reasonably left to protect himself with his existing employer or another employer with whom he might contract to serve. It seemed to him (the Advocate-General) that that was a sound argument as regards leaving time-expired laborers absolutely free to make their own bargain with their existing or a new employer. But he did not see the force of the argument as regards what was quite a different thing, the necessity of which could not to any certain or positive extent be considered to be less absolute than at first, *viz.*, the provision, as long as service continued, of a supply of proper house and hospital accommodation and food; and what he considered to be equally necessary as concomitant with it, was the keeping up of that system of inspection and mutual complaint and redress which alone could practically ensure that what was necessary would be supplied. The more he heard of what the state of things had been—he meant the state of things between 1865 and the present time—the more reason he saw for the extension to all laborers of the provisions to which he had referred. He apprehended that the practical state of things since the passing of the Act of 1865 and the Bill of 1867 had been this, that a good deal of what still remained to be clothed with legal sanction had in all good factories—he had not the slightest doubt that it was done in such factories as the Hon'ble Member was connected with—practically been introduced to a great extent, and the existing Inspectors had in strict law a little overstepped their powers by insisting on alterations and improvements in those matters to which the provisions of the present Bill extended. Therefore, it seemed to him (the Advocate-General) that only one conclusion could be come to, *viz.*, that the more enlightened, less ignorant, less selfish class, who were now much more generally placed in charge of gardens than was formerly the case, acting under the sanction and authority of their superiors in Calcutta, had practically admitted the necessity of those sanitary improvements, and had applied, and were applying, them indiscriminately to laborers serving under the existing Acts and to laborers serving under new contracts. This circumstance afforded a strong argument for the application of a uniform system to all, because, giving every credit for the improvements that had taken place, which had been the result partly of what he had stated, and partly of more direct interference on the part of principals, the contrary policy appeared in too many instances to have influenced those in subordinate positions. He could not but think that the gradual improvement had been partly also owing to the alterations actually made in 1865, and still more to the improvements discussed and all but carried into law in 1867, and that no sound objection to the establishment of legal security for the continuance and extension of this better state of things could be founded on the merely accidental difference between laborers whose time had expired and laborers whose time had not expired. How the application of these provisions could in any way interfere with the interests of the

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employer or owner; how it could in any way restrict, or burden, or interfere with the present state of things under which arrangements were becoming more and more complete and satisfactory, he (the Advocate-General) was at a loss to understand. He had heard and read a good deal on this subject lately, and up to this moment he had not heard one single specific reason—one fact—to show that that would be the result. The only specific objection made was as to the necessity of all fresh contracts being registered under the Bill. A reason, and a practical reason, was given why such registration would be injurious to the interests of the planter, and consequently that had been remedied. With the exception of that, he had not heard, and was at a loss to conceive, how the provisions of the Sections, the application of which was proposed to be extended to all fresh contracts of time-expired laborers, could prove injurious to the interests of planters. If in any case the extension of the proposed Sections would bear hardly by necessitating a change of things, it would only so bear where the present state of things was unsatisfactory; and he was quite satisfied that the extension of those Sections would not make the slightest change or difference to the majority, or at any rate a fast increasing class, of proprietors of tea gardens. Under these circumstances, he had no hesitation in asking the Council to go the full length of extending the Bill, in the mode the new Section contemplated, to all laborers who had been, or should be, brought to the tea districts.

As the printed notice was incorrect in some respects, he wished here to explain exactly what the effect of the introduction of the new Section would be. It left the laborer and the employer, after a contract under the existing Acts or otherwise had once been worked out, absolutely free as to the terms of the new contract as regards labor, as regards rice being supplied, and all matters of that kind. All that would be left perfectly free. The Section would not bring the employer of a time-expired laborer under any liability with regard to rates; it would not give the laborer the power of demanding the redemption of his contract on paying a certain price. That would be an interference with the terms of the contract between parties each of whom were *sui juris.* It would leave the contract to the ordinary operation of the law as regards the maximum amount for which suits might be brought for wages, and as regards the contract being a charge on the land: to do so would be attempting to give to the contract a legal effect, which otherwise it would not have. Then only two points were left: first, that whatever contract the parties entered into, such arrangements should be made or kept up as would ensure in the long run the preservation of the laborer's health and the satisfactory performance of work during so long as the laborer continued in the tea districts, *viz.*, by the reasonable supply to them of that which was necessary in the case of persons not settled on the soil, who had come from their home to a place where they had no choice and no means or appliances with regard to providing themselves with houses or any thing in the shape of rice or food. He (the Advocate-General) proposed also to make such laborers subject to the system of inspection and redress provided in the Bill, and he proposed to make that applicable to both sides. While he gave the laborer the power of complaint and superior facilities for obtaining redress, he also gave the employer a check over his laborers by the application of the penal Sections in cases of untrue or frivolous complaints, and with regard to absence or desertion. The proposed Section, if read in comparison with Act XIII of 1859, would, as to protection and security given to the employer, be found more extended and specific than any protection or security which could be obtained under the provisions of that Act.

MR. SUTHERLAND said that he was sure the Council would understand the great disadvantage under which he stood in following the Hon'ble and learned Advocate-General, and opposing, as he (Mr. Sutherland) felt it his duty

to do, the introduction of the proposed Section. He might, perhaps, be permitted to congratulate the Hon'ble gentleman on the singularly effective way he had taken in this Section of replying to the remark he ventured to make last Saturday regarding the anomaly of the Section then under discussion. He (Mr. Sutherland) had then pointed out that at that moment there were in Cachar 15,000 laborers working from choice in tea gardens absolutely free from the operation of the Acts; and to these the last Section did not, and could not, apply. The Advocate-General now, by way of answering the objection, brings back by one wide sweep under the Labor Acts all these people who had for years been free from its provisions.

This Section, as now put, is the third phase of the subject: first, Sections 88 and 89 of the Bill; then last Suturday's proposed Section, and now it would be supposed that the Section brought forward was complete and unassailable.

After the turn matters had taken in consequence of his last objection, he (Mr. Sutherland) had some natural hesitation in pointing out that the Section was not yet free from anomaly. Limiting himself to Cachar, from whence we had more exact figures regarding the number of persons employed, he would state that a considerable proportion of the 15,000 coolies before referred to, were never under the Act at any time: some of them must have come up as children, some were born in the province. These were now at an age able to pluck leaf, working side by side with their parents settled in the district, who by this new Section were brought back under the Act; while the children were altogether overlooked. To be complete, then, the Section should not only embrace these children, but all yet unborn, and condemn the whole labor of the province to a perpetual condition of quasi-serfdom.

He (Mr. Sutherland) objected on principle to all the Sections proposed to be extended to time-expired or recognized laborers; he was not going to combat in detail the different Sections included in the present motion: he thought the proposed provision was an unnecessary and unwarrantable interference with the relations between employer and employed.

The learned Advocate-General said that he had heard no argument against the inclusion of these time-expired people in the Act. The reply which he (Mr. Sutherland) would make to that was, that it rested with the Hon'ble and learned gentleman, and with those who, with him, urged the entirely novel provision, to justify its introduction by instancing cases of ill-treatment, and showing that time-expired laborers had not been as kindly and humanely treated as those under the Act.

With regard also to what fell from the Hon'ble and learned member regarding the Act of 1865, in the discussions respecting which no objection was taken to the retrospective effect of the Act, he (Mr. Sutherland) could only say that that omission did not constitute a valid objection to his resisting the Section now proposed. And with regard to the Bill of 1867, he had not seen the particular provision bearing on the subject.

[THE ADVOCATE-GENERAL explained that he did not say that the Bill of 1867 had any retrospective effect as regards time-expired laborers, but as regards laborers whose contracts should have expired prior to the Act coming into operation.]

MR. SUTHERLAND resumed.—He had not seen the Section, but of course as the learned Advocate-General had an intimate knowledge of that Bill, and was thoroughly acquainted with its provisions, he (Mr. Sutherland) quite understood that the Bill of 1867 was as stated. But even that did not affect the present case. We objected (he spoke not only for himself but in behalf of all interested in tea cultivation) to prolonging interference between employer and employed, and maintaining a code of regulations the necessity for which had passed away when the employed laborers settled in the district.

He objected to keeping the people in leading strings, and harassing the planter to do in effect that which he was willing

and ready to do without the law. He (Mr. Sutherland) need not repeat what he said at the last Meeting about the necessity to the planter to provide for the well-being of his laborers: it was positive life or death to the enterprize to have a good supply of labor, and you could not command that supply without treatment kind and humane in every respect; and a planter who had his own interests at heart would more effectually provide for the health and comfort of his laborers, than was or could be done through the supervision and orders of an Inspector. He (Mr. Sutherland) could say from experience that in several instances some orders were issued which could never have been carried out. He would, with His Honor's permission, ask for a division against the motion now before the Council.

He did not know what the result of the vote would be, nor need he now anticipate the effect of the Section if passed into law. In his opinion it was unnecessary to begin with, it was retrograde in policy, and inconsistent, and he felt convinced that it would receive the censure of enlightened public opinion both in this country and in England.

MR. MONEY said that he would only make one or two observations to explain the reasons of the vote he was about to give. All the objections he had heard against the amendment before the Council were of a general character. He had listened to hear if there was any particular provision amongst those which were proposed to be extended to re-engaged laborers, which would operate harshly towards employers; but all the objections that were raised were of a perfectly general nature. The objections were based on the principle of non-interference, but in no way showed how the extension to time-expired laborers of any particular provision could in any possible way affect the interest of planters.

The main reason on which he (Mr. Money) would vote was, that, unless these Sections were applicable to all aborers in the tea districts, they would become in fact inoperative. He could not see how these provisions could apply to a certain number of laborers, and at the same time not apply to others. He would take as an example Section 70, which enacted that there should be provided sufficient hospital accommodation. Now, unless that Section applied to all laborers on the estate, it would be entirely inoperative; and yet those who objected to the extension of this Section to time-expired laborers did not object to its application to new contract laborers. Suppose a planter had 500 laborers on an estate, 300 new men, and 200 time-expired laborers. The Inspector would have to see that there was sufficient hospital accommodation for the new men. He would say to the planter—"I see you have 500 men, and if the average of sick were fixed at 5 per cent., with a margin for exceptional sickness and epidemics, you ought to have sufficient hospital accommodation for 35 or 40 men. But I observe that you have accommodation for only 24 men." The planter might reply—"You have nothing to do with the time-expired laborers." The Inspector would answer—"But I see that half the men in hospital now are of the time-expired class." The planter might still say—"There is the law. You have nothing to do with these details; you have only to see that there is sufficient hospital accommodation for the 300 new men, and nothing further." Clearly, under such restrictions, the law would be practically of no effect. The same remarks would apply to other Sections objected to. We might, therefore, as well leave out altogether the Sections regarding hospital accommodation even as regards contract laborers, unless we applied them to every one. In measures of this kind regarding conservancy and police, we must either make the law general, or leave the thing alone altogether.

BABOO PEARY CHAND MITTRA said that at the last Meeting of the Council he submitted that the amendment then proposed was a great improvement on Sections 88 and 89 of the Bill, inasmuch as the principle of freedom in the engagements of the labo-

rer and employer was so far recognized, that it dispensed with the registration of the contracts of re-engaged laborers. He was still of that opinion, but he thought it would be still better if these laborers were free from the application of certain provisions contained in the present amendment. The great principle to be kept in view was the gradual extension of the principle of freedom, and the gain from the advancement of that principle would be much greater than from the continuance of the restrictive system when it is not called for. The principle of self-interest was a stronger principle of action than any legislation. If the employer considered it to his interest to secure the services of the laborer, and the laborer found it beneficial to him to continue in the service of the employer, the principle of self-interest would operate on both in inducing them to behave well to each other and fulfil their respective engagements. He (Baboo Peary Chand Mittra) thought that the legislature ought to recognise this principle of freedom of labor more and more as the contracting parties became in a position to understand each other. It was true that we had past legislation on this subject, but that was no justification for the perpetuation of the restrictive system. What was necessary some years ago might not be necessary now. Times had changed, and the Council found that there was now more willingness and readiness on the part of the laborer to enter into fresh engagements. In fact, large numbers had done this without any inconvenience or harm to themselves. Why, therefore, should the legislature interfere, and subject the laborer and employer to provisions without which both laborers and employers could well take care of themselves? It had been represented that the difference between newly-imported and time-expired coolies was "accidental," but he submitted that the difference between them was real and great. While he fully appreciated the humane motives of the learned Advocate-General in including in his amendment the provisions which he proposed to make applicable to re-engaged laborers, he thought the Council would find that there was no accidental, but a marked difference between raw and time-expired laborers; between a laborer who did not and a laborer who did understand the nature of the contract and the kind of service he had to perform; and in the face of such difference, he (Baboo Peary Chand Mittra) thought the Council ought not to interfere. The time-expired laborer ought to be treated as a free agent, and not be kept under the perpetual tutelage of the Government: and even if he were subjected to any occasional inconvenience, it would be outweighed by the gain from the advancement of the principle of freedom to the laborer and employer who were capable of understanding their respective engagements.

MR. KNOWLES said that he thought the greatest argument against the introduction of the Section proposed by the learned Advocate-General was, that it was acknowledged that we had now in Cachar 15,000 laborers whose time had expired; and in all the communications that had been received from Inspectors and Magistrates since this Bill had been brought forward, there had not been a single complaint as regards the position or condition of those coolies whose time had expired and who were working without agreement. He thought that was a great argument in favor of leaving the system as it was.

BABOO ISSUR CHUNDER GHOSAL said that he had already had occasion to speak of the amendment before the Council in the debate of last Saturday, when the question was mooted. He thought that there was not the slightest doubt that time-expired coolies should be left to their own resources and management. But he agreed with the learned Advocate-General and the Hon'ble Member on his right (Mr. Money), that in matters of police and sanitation certain measures should be adopted which should extend to all laborers, as otherwise those measures could not be properly administered. Under these circumstances, he (Baboo Issur Chunder Ghosal) thought, without going

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further into the arguments advanced, that, except in the matter of food, lodging, and hospital accommodation, re-engaged laborers should be left entirely to themselves.

With regard to the question of self-interest, it was no doubt a very proper motive; but if all the planters regarded their true interests as they should, they would not be dissatisfied with the measures that had been passed.

THE HON'BLE ASHLEY EDEN said that there was very little which he could add to the clear and lucid statement of the case made by the learned Advocate-General. He (Mr. Eden) had last week given in full his reasons for voting in favor of the Section, and what he then said applied with equal force to it as now amended, for he must admit that when speaking in favor of the amendment last week, he had been under the mistaken impression that its provisions extended to all time-expired laborers, and it was only when he looked at the definition of the word "laborer," that he found that laborers whose contracts expired before the passing of the Act would be excluded from the operation of the proposed Section. He had from the very first been under the impression that all time-expired laborers would fall within the protective clauses of the Act, and it was certainly the original intention of Government that they should do so. He must still say that he had heard no single argument pointing out specifically the manner in which it was feared that the amendment would press hardly on planters. The sole argument brought forward, as far as he could gather, was that there was no occasion for protection, as that was a matter already provided for by the free-will of employers, and that to give further protection would be a work of supererogation. The Hon'ble Member opposite had just said that planters were "able, willing, and ready" to do without the law what it was proposed to enjoin upon them by law.

[MR. SUTHERLAND explained that what he meant to say was that the action of the planters would ensure all material comforts and benefits to laborers; but he did not admit the necessity of all that was required to be done by the Sections proposed to be extended.]

MR. EDEN resumed.—It was admitted that all that was proposed to be done was actually done; and in the face of this assertion it was perfectly inconsistent to say that to direct the proper supply of food, water, medical attendance, and good houses, involved hardship on the planter, for the law would only apply to those who did not make proper provision in this respect. It came to nothing more than this practically, that Government employed an Inspector to see that all planters did what most of them admitted they now do, and what no one pretended that they ought not to do; and it seemed to be felt that to lay down penalties for the non-performance of these duties was a reproach cast at the whole body of planters who really required no supervision in the matter. This he (Mr. Eden) thought was a very weak argument. No greater reproach against the planters was involved in the Government retaining its power to punish those who did not comply with the law, than was contained in nearly every law. No one, for instance, would maintain that the penalties for breach of the customs' law was a reproach to the whole body of merchants: but the cases were entirely analogous. He was quite certain, from past experience, that there were instances in the tea districts in which it would be found very necessary to enforce these protective provisions; for what was done by a far-seeing planter would not, as the past had clearly shown us, be done by one who followed a short-sighted policy, or was careless about such matters.

The Hon'ble Member (Mr. Sutherland) also pointed out what appeared to him a further anomaly with regard to children of imported laborers who were born in the country, and had grown up and were working in the plantations, and said that they would not come under the provisions of the Act. But their case was very different; they were really inhabitants of the district, they must have lived there 10 or

12 years before they were able to labor they were working with their relatives, and their fathers and mothers would look after their interests, and the probability was that they did not enter into contracts at all, and were therefore free to go away and labor in any other part of the district if they chose.

On the whole, he (Mr. Eden) thought that in point of fact an altogether false importance had been attached to the anticipated effect of the amendment. It would not, according to their own statement, necessitate any action on the part of planters which would affect them pecuniarily or in any other way. The Inspectors had already by friendly communications induced planters to do a great deal in the direction contemplated, which had caused great effect on the mortality; and if the Inspectors had had the power, which it was now proposed to give them, to enforce these sanitary regulations, still greater improvements would result.

MR. RIVERS THOMPSON said that he was unwilling to record a silent vote upon the question which was now under the discussion of the Council, for though he came under the category of those described by the learned Advocate-General as practically unacquainted with previous legislation on the subject of coolie emigration to the North-East Frontier Districts, and though he had not the personal experience of the Hon'ble Member on his right (Mr. Sutherland), the voluminous papers which had been laid before the Council upon the subject and the discussions which had already taken place upon the Bill, enabled him, as it would any one else who had paid attention to what had passed, to form a fairly satisfactory opinion upon the question now under consideration; and he confessed that, having heard both sides of the argument upon this important Section, his sympathies were entirely with those who advocated the proposal that on the expiry of the first three years' contract, a laborer should be placed altogether in the position of any other native inhabitant of the district.

He (Mr. Thompson) had no hesitation in saying that, considering the circumstances under which labor had to be imported into Assam and Cachar, from almost, as it were, a foreign country, he went to the full length with those who insisted upon the restrictions which the Bill proposed for the earlier stages of coolie emigration. He thought, and so far he believed, the Hon'ble gentlemen on his right concurred, that for the recruiting, engagement, medical examination, transport, and debarkation of the coolie on the scene of his future labors, supervision by the Government, under the authority of the law, was absolutely necessary. In one of the earlier debates upon this Bill, when opposition was threatened upon the subject of the contract to be made with the laborer, and it was suggested that it would be desirable to leave it optional with the employer to make any agreement either at the place of recruiting or on the arrival of the coolie at the tea garden, he (Mr. Thompson) had been prepared to resist with his vote any attempt to allow the coolie to start on his journey or voyage without the preliminary execution, essential to his well-being and safety, of a contract fully explained to him, and as far as possible voluntarily undertaken before his departure. And glad as he was that the present Bill recognized and had adopted a principle of freer importation of labor into the tea districts, inasmuch as it removed some of the restrictions to private recruiting which, he believed, expanding with advancing years, would tend to the abolition of what the Special Commission had denounced as the source of all evils, *viz.*, the system of recruiting by contractors, he (Mr. Thompson) was equally certain that whether the coolie was recruited by private means or by licensed recruiters, it was a positive necessity in his case that the contract to labor should be secured before the man left this part of the country, and that in all the preliminary measures necessary for his introduction into the tea producing provinces, the Government should have the right to exercise the fullest supervision. He would go beyond this and insist that the continuance

of the official protectorate should be maintained for the first three years of the original contract for which the coolie had engaged under special provisions as to his welfare and protection.

But this, he thought, should be the limit of the protective measures which legislation should sanction; and on the expiry of the three years' agreement, it would, in his opinion, be a better arrangement if the Bill would recognise the complete freedom of the laborer to act as he chose, and the complete freedom of the employer in his dealings with such a laborer. He (Mr. Thompson) thought so, because interference of the State with any question connected with labor was an interference which could be justified on special considerations only, and should cease when the necessity for such special arrangements was found to be uncalled for, and because in the case before the Council the causes which operated for the enforcement of this special protection seemed to him to determine when by a three years' experience of the place and of the people, the laborer was in a position to judge for himself and act on his own judgment.

It would be noted by the Council that the question of the advisability of taking this course was not dependent upon any circumstances of doubt or uncertainty, but that the actual experience of facts was before them on record, that in some of the most flourishing parts of the tea country, and especially in Cachar, a large number of coolies were working on this particular industry to their own and the planters' mutual satisfaction, without any of the restrictions which it was now proposed to enforce. It did seem to him a retrograde measure for which no necessity had been shown, that where for many years the relations between the laborer and his employer had been perfectly unfettered, the Council should now, as regards the 15,000 men in Cachar to whom repeated reference had been made, relegate them to the system of Government supervision and protection which the Section now proposed by the Advocate-General would necessitate. It was clear that this system, now partly in operation almost throughout these provinces, had not only found no one to condemn it as open to abuse, but that even official authorities in the district had commended it as a satisfactory system in its present stage, and as opening out the prospect of securing a resident native population inured to and skilled in the particular labor which these provinces required.

The objection had been urged that where the proposal referring simply to conservancy and police arrangements was good in itself, the planters, if honestly inclined to carry out its provisions, had no right to complain of its enforcement by law. It seemed to him natural to reply that if the planters had been carrying out all sanitary requirements gratuitously and voluntarily, and were impelled to do so by their own self-interest, there was no occasion to force the duty upon them by a Bill of pains and penalties. At any rate he was certain that that would be much better done, and secure in the long run more permanently satisfactory results, if it was done on the spontaneous efforts of the employers than if the duty was imposed upon them by a strict law. Nothing was more clearly established in the Report of the Commissioners than the fact that the protectorate system was one producing great irritation in the provinces, and tending to interfere seriously with the proper authority of the employer over his laborers; and on this ground alone he was satisfied tha it would be a wiser legislation to take the opportunity which this Bill afforded of removing the grounds of complaint which it was proposed to perpetuate, and trying the experiment of a free system of labor by yielding the reasonable concessions which the Hon'ble Member on his right had asked for.

As an illustration of the feeling of irritation to which he (Mr. Thompson) had alluded, he would point to the position of Hon'ble Members in this Council. They gave their time and labors to the duty of legislation freely and gratuitously, and, notwithstanding

the objections taken out of doors, he thought, on the whole, that they discharged their duties with success. They gave their assistance under no restraint or coercion; and the value of their labors consisted in a great measure in the freedom of the service. If an Act of the legislature to-morrow imposed their duty upon them by law, he ventured to think that every Member of the Council would resent the measure as a most uncalled for interference. He could therefore quite understand the resistance which the Hon'ble Member who opposed the introduction of the Section extended to the present proposal: and in the belief that it was not for the benefit of the North-East Frontier Districts or of the Government itself, he was prepared himself to vote against the adoption of the Section which the learned Advocate-General had submitted for their consideration.

THE ADVOCATE-GENERAL said that the discussion that had taken place had afforded him considerable satisfaction. It left the conclusion on his mind that there was no real, specific, practical objection to the application of these Sections to re-engaged laborers, and that no answer could be given to the arguments which had been brought forward in favor of their extension. There were only one or two points on which he wished now to say a few words. A good deal had been said as to unnecessary interference with the principle of freedom of labor, and it was said that it ought to be our object to *extend* that principle. He (the Advocate-General) apprehended not. In legislation of the particular kind with which we were at present dealing, the leading principle ought to be to remedy the existing evil with the least possible interference. Then with regard to the suggested irritation which it was said would be the result of the body of planters being compelled by law to do that which they were now voluntarily doing, it was not suggested that the extension of these provisions to already time-expired men would cause irritation by giving a handle to Inspectors for unnecessary interference. That had not been suggested, and if it were, the answer would simply be that any Inspector who wished to abuse the power and position of an Inspector could find ample means to ferret out causes of irritation and vexation by interfering with the state of things amongst the class of laborers whose time had not expired, without having recourse to those whose time had expired. But when it was said that persons would feel irritation if the law compelled them to do that which they were willing to do of their own accord, he (the Advocate-General) would ask if a person who ordinarily obeyed the general law of the land would feel irritation because the law would compel him to obey it if he did not voluntarily do so.

Then there was one point which was of great importance, and which confirmed the view which he had expressed. At one point of the discussion we were treated to a state of things in which objection to the extension of these provisions was based on the ground that every thing that was theoretically desirable had been, and would be, supplied. But now no more was alleged but that, in the opinion of the Hon'ble Member, the planters did what *they* thought fully sufficient. If it came to that, there would be this difficulty, that if the law did not lay down, partly by the elastic power of rules, the precise nature of what should be provided, each individual planter would form and act on his own opinion as to what was proper or necessary for his particular garden. And he could not conceive how there could be a choice between a state of things in which each man might do what was right in his own eyes, and the systematic application of what was carefully considered, what could not press heavily on planters willing to serve their own interests, and would prevent the exercise of bad or short-sighted motives on the part of particular planters which would lead them to provide means totally inadequate. There could be no question between these two systems.

Then with regard to the question of interference with labor, he would just

say one word more. The argument was based on a confusion of ideas. It was not interfering with the freedom of labor to leave the laborer to get employment where he could and how he could, but at the same time to provide that when masses of laborers were crowded on particular estates more or less suited to them, the employer should be placed under reasonably stringent provisions for the prevention of famine and disease and ill-treatment. It was just the same as when the British Parliament passed measures to prevent overcrowding and enforce sanitary arrangements in lodging houses. The two cases were in principle exactly similar.

THE PRESIDENT said that before putting the motion he would say a very few words on the general question before the Council. He had been much struck with the difference between the discussion on this occasion and that which occurred in 1867. It was obvious, from the speeches made in the course of the present discussion, that the strong feeling against what was now proposed owed its origin entirely to a dislike on the part of planters to be controlled in the exercise of their discretion in the care and management of their laborers. In 1867 he (the President) could not recollect that anything of the kind was urged. It was then accepted that some control by Government must be exercised. The reason of the difference of feeling then and now, no doubt, was that at that time there was a very strong sense of the bad management which had occurred in many plantations; whereas very great improvement in that respect had taken place since. He could, therefore, understand, and in some degree sympathize with, the feelings of those who were of opinion, judging from themselves and those employed under them, that legislation of this sort was not required any longer. He must, however, say distinctly that it was impossible for him to admit that no legislation for the protection of laborers in Cachar was any longer necessary. The Hon'ble Member who spoke last but one (Mr. Thompson), spoke of the laborers as if they were men who, after the expiry of their contracts, were perfectly free to do as they liked, and perfectly able to manage their own affairs, and look after their own interests. In that consisted the whole question. He (the President) had not been able to gather in what the distinction existed between a laborer under the three years' contract, and a laborer who, after that term, entered into a fresh contract. As far as he knew, the laborer was exactly in the same condition as before; he lived in the lines, and he depended on his employer for house accommodation, and for good and careful treatment just as much as in the first three years. In short the view on which he (the President) thought it his duty to support the motion was, that if it was admitted that protection was necessary at all, it seemed altogether unreasonable to say that protection was necessary during the first three years, and that it was not necessary the day after these three years expired. He saw with much regret the strong feeling against the provision now proposed; but holding as he did that it was impossible to abandon all protective legislation, and feeling that there was no one reason which could be given for affording protection to laborers during the 1st, 2nd, and 3rd years which would not exactly apply to the laborer in his 4th year, he considered it his duty to support the motion.

The question to omit Sections 88 and 89 was then agreed to.

On the question to introduce, in lieu of those Sections, the Section proposed by the Advocate-General—

The Council divided :-

AYES 6.	NOES 5.
Baboo Chunder Mohun Chatterjee.	Mr. Sutherland.
Baboo Issur Chunder Ghosal.	Mr. Alcock.
Mr. Money.	Baboo Peary Chand Mittra.
The Hon'ble Ashley Eden.	Mr. Knowles.
The Advocate-General.	Mr. Thompson.
The President.	

The motion was therefore carried.

MR. SUTHERLAND said that if it was in accordance with the Rules of

the Council, he would desire, in the name of those who had voted against the motion and in the name of all interested in tea cultivation, to enter a protest against the Section which had just been introduced.

THE PRESIDENT said that the Hon'ble Member could in the course of the week refer to the Rules of the Council, and if in accordance with those Rules, his protest would be recorded.

THE HON'BLE ASHLEY EDEN observed that the division on the motion would be recorded in the Proceedings of the Council, and the object the Hon'ble Member had in view would thus be attained.

The postponed Section 94 was agreed to.

The postponed Sections 95 and 96 were passed after amendments made on the motion of the Advocate-General to show clearly that a laborer could only obtain compensation or the cancellation of his contract on his wages being in arrear *to an amount* exceeding the total of such laborer's wages for two months, or four months, respectively.

Section 100 was agreed to.

Section 101 provided for the cancellation of a contract by desertion.

MR. MONEY said he understood that the provisions of Section 100 and of Section 101 were introduced in consequence of a Despatch from the Secretary of State, dated 17th July, 1865, of which the following was an extract:—

"According to ordinary law, a laborer having suffered imprisonment for a breach of contract is thereby discharged from further service. I admit that where the employer has been subjected to great expense in bringing a laborer to the place of employment, greater stringency in the penal enactment for enforcing performance of the contracts is warranted. Nevertheless, I cannot but think that the provisions of these clauses, which extend the period for which the laborer might be imprisoned for an indefinite time, go too far in the opposite direction. I am of opinion, therefore, that it would be right to provide that, after a certain amount of imprisonment, the extent of which I will leave to your Government to determine, the laborer should be relieved from the obligation of the contract."

He presumed that the intention of these Sections was that the laborer who deserted once should be sentenced to imprisonment for one month, and that he should be imprisoned for two and three months respectively for a second and third desertion, which would make a total imprisonment of six months, and entitle the laborer to a cancellation of his contract. But it appeared to him (Mr. Money) that two results might follow from the wording of Sections 100, 101, and 104 as they stood. First, that the laborer might, in some cases, not get his contract annulled until he had been imprisoned for very nearly nine months; and secondly, that he might be sentenced to 20 or 25 terms of imprisonment before he became entitled to the cancellation of his contract. Section 100 gave a discretionary power of imprisonment for a term which might *extend* to one month for the first desertion, and to two and three months respectively, for the second and third desertions; and Section 101 provided that "whenever any laborer shall have *actually suffered terms of imprisonment* amounting in the whole to six months for desertion," his contract would be cancelled. Again Section 104 permitted the employer at any time to apply to the Magistrate for the release of the laborer, and the Magistrate was thereupon required to make over the laborer to the employer, and to cancel the remainder of the sentence.

With regard to the first of the two results to which he (Mr. Money) had referred as likely to arise from the wording of Section 101: Suppose a laborer had been sentenced for three separate desertions to one, two, and three months respectively, the employer might, just before the expiration of the third period of imprisonment, when only one day of the term remained, apply for the release of the laborer, and the contract could not then be annulled. On the 4th desertion, the Magistrate might again sentence the laborer to three months' imprisonment, and at the exclusion of that sentence, the laborer would have suffered very nearly nine months' imprisonment—

THE ADVOCATE-GENERAL explained that in the first case the contract might be annulled and the laborer released from imprisonment on the very first day of the 4th term of imprisonment, as the laborer would then have actually suffered six months' imprisonment.

MR. MONEY said he did not think the wording of the Section as it stood would permit of this, for the words were "actually suffered terms of imprisonment," and there was no permission to annul a portion of any such term. [THE ADVOCATE-GENERAL. The objection could be met by the omission of the words "terms of" before imprisonment.] He was not prepared to press the particular amendment of which he had given notice, as he thought the suggestion of the learned Advocate-General would get rid of the first of the two objections he had brought forward. It applied however only to the first. As to the second, he (Mr. Money) presumed that the intention of Section 100 was practically to limit the imprisonment for desertion to three terms, on the ground that when a man had deserted three times his services were not worth retaining, and the punishment awarded entitled him to cancellation of contract; but there might be cases in which a planter who wished to harass a laborer might defeat the very object of the Section by taking full and frequent advantage of the provisions of Section 104, and removing the laborer a week after each sentence of imprisonment.

THE ADVOCATE-GENERAL said that it would be sufficient to amend the present Section 101 in the way he had suggested, and when the Council came to Section 104 he would move an amendment with a view to provide against the vexatious action of planters under that Section. He never understood that three desertions were to cancel a contract, but that it was the period of imprisonment suffered that was to be considered.

THE PRESIDENT said the recommendation of the Tea Commissioners was that the laborer should be released after *six months' imprisonment.*

MR. MONEY said that the alteration in Section 104 promised by the learned Advocate-General met the object he had in view, and he would therefore accept it.

The amendment suggested by the Advocate-General in Section 101 was then carried, and the Section agreed to.

Sections 102 and 103 were agreed to.

Section 104 having been read—

THE ADVOCATE-GENERAL said that to prevent the vexatious splitting up by employers of sentences of desertion by removing the laborer before the expiration of running sentences, he proposed to make the action of the Magistrate not compulsory, but discretionary on the showing of sufficient cause. Of course the Magistrate would then refuse to release the laborer if he were not satisfied that the action of the employer was *bonâ fide.*

The Section was then passed with amendments to the above effect.

Section 105 was agreed to.

Section 106 was as follows:—

"On the expiry of any sentence of imprisonment for any offence under this Act, save as is provided in Section CI, it shall be the duty of the Magistrate to make over such laborer to any person appointed on the part of his employer to receive charge of him; and no conviction under this Act, or imprisonment under such conviction, shall be held to operate as a release to any laborer from the terms of his contract: Provided, nevertheless, that the period of imprisonment shall in no case be prolonged by reason of there being no person present on the part of the employer to take charge of the laborer at the expiry of his sentence, but such laborer shall, in that case, be sent to the principal place of business of such employer, and the expense of such conveyance shall be levied from the employer in the manner provided under this Act for the recovery of the rates imposed under this Act."

BABOO ISSUR CHUNDER GHOSAL moved the omission of the Proviso at the end of the Section. He thought that if an employer did not arrange to receive back the laborer on the expiry of his term of imprisonment, the laborer should be released, and that the Officers of Government should not be required to send the laborer to the employer.

The motion was put and negatived.

THE ADVOCATE-GENFRAL moved the introduction after Section 106 of the following Section, which was in the Bill of 1867, but which, through inadvertence, had been left out of the present Bill:—

"The duration of every unlawful absence from labor, of which any laborer may be convicted, and every sentence of imprisonment for any offence under this Act, shall be endorsed on the contract, at the time of its being passed, by the Officer passing it; and no such period of imprisonment or unlawful absence so endorsed shall be reckoned as part of the term for which the laborer is bound to serve, but such term shall extend to such further period as shall be equivalent to the aggregate amount of the imprisonment and unlawful absence so endorsed."

The motion was agreed to.

Sections 107 and 108 were agreed to.

Section 109 was as follows:—

"None of the provisions of this Act shall apply to domestic servants, nor to any person proceeding alone, or accompanied by his family only, nor to any number less than twenty of persons proceeding with or without their wives or their children under twelve years of age to the said Districts to labor for hire, without the intervention, direct or indirect, of a recruiter, or of a contractor, or of a garden sirdar."

BABOO ISSUR CHUNDER GHOSAL said that in the Act of 1863 the number of domestic servants who were to proceed to Assam and Cachar of their own accord was limited to ten, but by this Section the number was increased to twenty. It had been explained to the Council why the number of laborers which a garden sirdar might be permitted to take up irrespectively of the provisions of the Act was fixed at twenty; but no reason had been assigned for increasing the number of domestic servants from ten to twenty. He (Baboo Issur Chunder Ghosal) could not understand why the number had been increased.

THE ADVOCATE-GENERAL said that the Section made *no* alteration in the law as regards domestic servants. No limit was placed either by the existing law or this Bill as to the number of domestic servants: the limit of twenty applied exclusively to persons who went to labor for hire.

The Section was then agreed to.

Sections 110 to 113 were agreed to.

Section 114 was passed with the sustitution of "first day of November 1869" for "first day of September 1869" as the date for the commencement of the Act.

The postponed Section 53 was then agreed to.

On the motion of the Advocate-General, an amendment was made in the definition of the word "laborer," so as to make the definition accord with the Section as to re-engaged laborers which was substituted for Sections 88 and 89.

Verbal amendments were also made, on the motion of the Advocate-General, in Sections 25, 29A., 31, and 68B.; and Section 69, which provided for the supply of rice, was omitted as being no longer necessary in consequence of a provision to the same effect being included in a subsequent Section.

The preamble and title were agreed to.

The Council was then adjourned to Saturday, the 21st instant.

Saturday, 21st August, 1869.

PRESENT:

His Honor the Lieut-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra.
T. Alcock, Esq.,
H. H. Sutherland, Esq,
Baboo Issur Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

POLICE.

THE HON'BLE ASHLEY EDEN moved that the Bill to amend the Constitution of the Police Force in Bengal be passed.

The motion was agreed to, and the Bill passed.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL said that he had on the Paper a motion that the Bill to consolidate and amend the law relating to the transport of laborers in the Districts of Assam, Cachar, and Sylhet, and their employment therein be passed. Hon'ble Members would doubtless all have received, since the notice of motion was given, copy of a petition from a body representing many, if not all, of those who were interested in the subject matter of the Bill as employers of labor in the Tea Districts, in which the Council were asked not to proceed further to the final passing of the Bill, until the Bill had been printed and published for general information. He did not propose on this occasion to make any observations whatever on the particular grounds which might or might not be given in that application for the re-publication of the Bill in the shape in which it might pass through the Council, but under the circumstances, and with reference to the particular amendment of the Bill carried at the last Meeting of the Council, in which an alteration was introduced, which it must be considered was one of substance, he thought it would be more desirable that the prayer of the petition should be acceded to, and that the final passing should be deferred till that day fortnight in order that the Bill might be re-published. Therefore, instead of now moving that the Bill be passed, he would move the postponement of the motion till the date just mentioned, and at present would, with the permission of the Council, propose to make a reference to some of the Sections of the Bill which seemed to require amendments involving slight changes, and which on going through the Bill as a whole it appeared desirable to make.

On the motion of the Advocate-General, two verbal amendments were made in Section 6, with the object of making the grammatical construction of the sentence clearer.

In Section 7, which provided that a contractor should give the Superintendent of Labor Transport such information as he might require, the concluding words "and for the purposes of this Section every Superintendent shall be deemed to be an Officer in the service of Government" were struck out as unnecessary, a Superintendent of Labor Transport being a public servant within the meaning of the Penal Code.

Verbal amendments were made in Sections 14, 16, and 18.

Section 19 provided that garden sirdars not authorized to engage more than twenty native inhabitants, should bring them before the Magistrate of the District or in charge of *a* Sub-Division of the District in which the engagement took place.

On the motion of the Advocate-General, the word "the" was substituted for "a," so as to make it imperative that in the case of garden sirdars not authorized to engage more than twenty men they should be taken before the Magistrate of the District or the Magistrate in charge of *the* Sub-Division of the District in which the engagement took place.

Verbal amendments were made in Sections 23 and 29.

Section 31 provided that every contractor, recruiter, or garden sirdar should provide suitable food and lodging for native inhabitants sent by them to a depôt; and Section 32 enacted a similar provision with regard to garden sirdars not authorized to engage more than twenty men who forwarded them by land-journey.

THE ADVOCATE-GENERAL said that under Section 31 a garden sirdar, which would mean *any* garden sirdar whether authorized to engage more than twenty native inhabitants or not, was throughout the journey (that was to the depôt) to provide the inhabitants with proper and sufficient food and lodging. Then Section 32 provided for the continuance of that provision of food and lodging till the arrival of the laborers at the place of labor, but only in the case of laborers taken on by land-journey. In the case of those large parties who were taken up by a recruiter or garden sirdar acting as a recruiter, he must take them to a depôt, and therefore Section 31 was

right in providing food and lodging up to that time. When the men got to the depôt, the contractor with whom they must be placed was to provide suitable food and lodging and medical attendance; and the Superintendent would supervise the loading on board of provisions for the rest of the voyage. But in the case of small parties they might go up by boat or land-journey, and might not go near a Superintendent. He (the Advocate-General) therefore poposed slight alterations in both Sections so as to restrict Section 31, so far as it related to garden sirdars, to those who were authorized to engage more than twenty native inhabitants, and to make Section 32 general, so as to apply to all journeys whether by land or water.

Motions to that effect were then carried.

Verbal amendments were made in Sections 33, 34, and 35.

Section 42 related to the licensing by Superintendents of steamers or boats to carry laborers.

THE ADVOCATE-GENERAL said that to meet the case of small parties of laborers engaged by garden sirdars not authorized to engage more than twenty, who might embark in places where there was no Superintendent, he would move an amendment to the effect that in such cases the license might be granted by the Magistrate wthin the limits of whose authority the laborers might embark.

MR. SUTHERLAND said that he did not understand the Bill to apply to the conveyance by boat of these small parties of laborers. If it was the fact that the Bill as it stood did apply these provisions to such parties, he thought that they ought not to be subject to them.

THE ADVOCATE-GENERAL said as it was possible that some further discussion might be desired on this and some subsequent Sections regarding licenses, he thought it desirable that the Council should resolve itself into a Committee on the Bill, and would move accordingly.

The motion was agreed to.

The ADVOCATE-GENERAL's amendment having been proposed—

MR. SUTHERLAND said he admitted that the amendment proposed was a relaxation of the existing law. But with his hon'ble friend on his right (Mr. Knowles), he was all along under the impression that the provisions of Section 42 and the subsequent Sections regarding licensed boats did not apply to parties of laborers taken up by garden sirdars not authorized to engage more than twenty. Of course, parties under twenty going up by steamer with larger parties recruited by contractors should be subject to all the provisions laid down for the regulation of transit by steamers. But it would be a practical hardship to a garden sirdar who wished to embark with his men from any place in the Mofussil to require him to get the boat licensed by the Magistrate.

THE ADVOCATE-GENERAL said that the garden sirdar would not have to get the license; that would be done by the manjee who wished to take the laborers in his boat. It could never have been the intention to exclude boats conveying small parties from the provisions of the 42nd and following Sections, as the provisions of Section 52, giving certain powers of detention with regard to laborers proceeding by land or water, must clearly apply to parties under twenty as well as to larger parties. He (the Advocate-General) thought that a party of not more than twenty might be just as liable to disease, and might be affected by disease, and it might be just as necessary to detain them as a larger party. Yet if the provisions of this Bill were not to apply to parties under twenty, from the moment they were taken on board a boat they would have no protection until they arrived at the place of their destination. That seemed quite inconsistent with the rest of the Bill, and the Section under consideration very clearly applied to all laborers proceeding by steamer as well as by boat.

MR. SUTHERLAND said that if that were the case, he failed entirely to apprehend what had been done with regard to garden sirdars. When the Bill left the Select Committee it was very much

more liberal than it stood new. The Hon'ble Member opposite, the Secretary to Government, as well as the learned Advocate-General, agreed in Council to certain modifications unfavorable in his (Mr. Sutherland's) opinion to the employment of garden sirdars; the Sections regarding the execution of contracts in the gardens were also withdrawn, but he had thought that transit arrangements were free. He understood the whole effect of the Bill as affecting garden sirdars not authorized to engage more than twenty laborers to be this: First, there was the certificate of the employer countersigned by the District Magistrate in which the garden was situate, and produced to the Magistrate of the District or Sub-Division in which the recruiting was to take place, and the contract might be executed there, or at the option of the garden sirdar at Calcutta; and then the sirdar was left to find his own way back to the gardens in the way he thought best. Of course in the case of a sirdar proceeding with a small party by steamer, he (Mr. Sutherland) admitted that when such a party was once on board together with a larger party, they should be in all respects subject to the same regulations as the larger party. But when it was possible to go by boat, he certainly understood that no Government interference whatever was to be exercised until the laborers arrived at the gardens. If it were otherwise, very little encouragement would be given to recruiting by garden sirdars.

THE HON'BLE ASHLEY EDEN said that with reference to what had been said as to the discussions in Select Committee, as far as he recollected what passed, it was agreed that the restrictions most objected to in regard to garden sirdars were those prior to embarkation, and that all the restrictions imposed as to the journey on the road should be maintained with such modifications as might be properly allowed. He thought that some of the Sections which it was now suggested should not apply to garden sirdars not authorized to engage more than twenty laborers, were very necesssary: there were, on the other hand, some of them which might very properly be omitted so far as they were intended to apply to parties under twenty. Although twenty laborers might appear a small number, yet a party of twenty coolies, with their wives and children, was by no means an insignificant party when they came to be considered with regard to the accommodation and supplies they required for a long boat journey. Certainly some check ought to be provided as to the safety of the boat, the supply of food, and the like. Therefore, he very strongly objected to such parties being at once exempted from the provisions of all these Sections, though they were perhaps not all applicable as they stood. For instance, it was very important that the provisions of Section 46 should apply, as it was the only check against crimping: it was very necessary that no laborer, whether belonging to a party of more or less than twenty, should be allowed to embark without a pass. The obtaining of a pass would entail no additional trouble or expense on the garden sirdar, who could obtain the pass from the Magistrate at the time of registering the laborer. On the other hand, he (Mr. Eden) thought the provisions of Section 48, which required the delivery to the Superintendent of a list of the laborers on board before the voyage was begun, were not necessary, and should not apply to parties of less than twenty laborers proceeding by boat. This was a provision only applicable to large parties. If the Council went through these Sections *seriatim* on this principle, he thought they should be able to decide which Sections should and which should not apply to parties of less than twenty laborers; and that they would be able to give all the security that was necessary, and at the same time meet the objections of the Hon'ble Gentleman opposite (Mr. Sutherland).

THE ADVOCATE-GENERAL said he was rather surprized that the whole scope of so many Sections should be misunderstood at the eleventh hour. He had, however, no objection, instead of the motion which he had proposed

in Section 42, to follow the course suggested by the Hon'ble Member who spoke last.

MR. SUTHERLAND said that to avoid delay at this stage he and his hon'ble friend (Mr. Knowles) were prepared to accept as a compromise the proposal that had just been made.

An amendment was then moved and carried in Section 42, so as to make it unnecessary for boats carrying less than twenty laborers to be licensed.

Sections 43, 53, 58, 59, and 62 were similarly amended so as to make them not applicable to parties of laborers not exceeding twenty.

The provisions of Sections 46 and 47 were made applicable to *all* boats carrying laborers.

THE ADVOCATE-GENERAL then moved that the Bill as settled by the Council be published for general information.

The motion was agreed to.

The Council was adjourned to Saturday, the 4th September.

Saturday, 4th September, 1869.

PRESENT:

His Honor the Lieut.-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*	T. Alcock, Esq.,
The Hon'ble Ashley Eden,	H. H. Sutherland, Esq.,
A. Money, Esq.,	Koomar Satyanund Ghosal.
A. R. Thompson, Esq.,	Baboo Issur Chunder Ghosal,
H. Knowles, Esq.,	and
Baboo Peary Chand Mittra,	Baboo Chundermohun Chatterjee.

REGULATION OF THE TRANSPORT AND CONTRACTS OF LABORERS.

THE ADVOCATE-GENERAL, in moving that the Bill to consolidate and amend the law relating to the transport of laborers to the Districts of Assam, Cachar, and Sylhet, and their employment therein be passed, said that this motion, as would be in the recollection of the Council, was postponed at the last Meeting with the object of giving time for further discussion and consideration. There had in the interval been some further discussion in which the views of the planters, as represented by the Landholders' Association, had been brought forward. But he had not seen anything which in any way altered the position of the Council or their ability at once to pass this Bill as regards the production in the interval which had been given of anything more specific, more detailed, or which could possibly be met in any other way than those general objections which really amounted to no more than anticipations of the prejudicial effect of the Bill as regards time-expired laborers. If the interval for further consideration which had been given had brought forward any thing in the shape of specific facts as to the practical prejudicial effect of the Bill in its application to time-expired laborers, he should have thought that a good ground for the reconsideration of that particular provision. As it was, it appeared to him that the provision as to time-expired laborers must remain as it at present stood. He however regretted to say that, notwithstanding the various occasions on which the question had been discussed, there still seemed to prevail a very general ignorance as to what the effect of the Bill would be in this matter. He must therefore repeat once more what he had explained on more than one occasion.

The effect of the Bill would be, as regards any laborer who had originally been taken up under contract, that so long as he continued to labor in the Tea Districts under contract, his employer for the time being would be subject to the same provisions as regards sufficient house accommodation, sufficient medical attendance, and sufficient inspection, as would be applicable so long as the laborer was working out his contract under this or any of the

existing Acts. That and no more would be the effect of the Bill; and that was what seemed not to be understood. The Bill in no way touched the question of freedom of labor: it left the most absolute freedom as to the terms of the contract in every particular. The Bill did not, in any conceivable sense of the word, attempt to keep the laborer in a state of tutelage. As he (the Advocate-General) had already said, the laborer was free to make or not any contract he chose. The Bill entitled a time-expired laborer, or a laborer whose contract had for any reason been cancelled, to contract in any mode in which he might now contract, and only provided that in certain respects all laborers under contract should be in the same position, not as regards their freedom of action, but as regards what was necessary for their well-being during the time they were serving under contract. He (the Advocate-General) could see no distinction that could be drawn between admitting that what was required for laborers whose contracts had not expired, was equally required for time-expired laborers, and saying that we should do away altogether with the principle of protection as it was called. The latter alternative he was not discussing: that was gone into in 1863, in 1865, and in 1867, and again in the general discussions on this Bill. That he took as the whole basis of legislative action in this matter. He maintained that, as regards house accommodation, medical attendance, and inspection, there was no difference, because the circumstances under which the new provision first brought forward in 1867 had been argued as necessary, rested not so much on the circumstance that the laborer had first been brought from a distant part of the country for a certain number of years, but on the consideration of his position as one of a mass of laborers who necessarily must be kept as regards house accommodation and every matter of that kind in very much the same position as when he was first taken to the Tea Districts.

It had been said that it was unfair and unjust to impose anything in the shape of a rate in respect of time-expired laborers. The answer to that simply was, that the Bill did not impose a rate on time-expired laborers. The Section imposing a rate was expressly excluded in its application to such laborers. Then it was stated that there were a certain number (he was now speaking in reference to Cachar, but it was reasonable to suppose that the same state of things existed in Assam) of laborers who had worked out their contracts and were now engaged in growing vegetables and other produce for the support of the laborers employed in tea planting, and that it would be improper to make the Act applicable to them. But the Act would not apply to such persons, because they were under no contract, or under contract to supply so much produce, not to labor. He (the Advocate-General) was really surprized to see it stated that persons requiring to retain the services of laborers for a day or a week, would be subject to the same provisions as those engaging laborers for three years. Such persons would not be subject to these provisions. All that the Act did was to impose certain conditions on any employer who engaged the services of laborers *by contract*,—under circumstances under which the laborers could not act as mere day laborers would, that was to say, cease to work or to ask for wages if they did not find that they were sufficiently accommodated. The Act would only apply to laborers bound under certain terms and conditions. With regard to these, as they would necessarily be working under the same conditions as regards accommodation, sanitary arrangements and the like, as laborers under the Act, no reason whatever had been advanced why the same provisions which were necessary, and had been admitted to be necessary or desirable in the one case, should not be admitted to be necessary or desirable in the other.

MR. SUTHERLAND said that he should not long take up the time of the Council, because he had already said so much on the subject. He would only make one or two remarks before the Bill was passed. The learned Advocate-General had said that he had

seen and heard nothing to justify the opposition that had been made to the 117th Section of the Bill. On the other hand, those interested in tea cultivation had heard no argument, and had seen nothing sufficient to justify the introduction of the Section and its perpetual application to all laborers once conveyed up under contracts to Assam and Cachar. The time which had elapsed since the last Meeting of the Council, the delay which His Honor the President kindly granted on the memorial of the Landholders' Association, was not sufficient for those interested in the subject to procure information from the Tea Districts. It was true they did not ask for a longer period, and considering the lateness of the Session, he (Mr. Sutherland) had been unwilling to propose anything that would lead to further delay. But those interested in tea were very much disappointed that more time had not been granted in order to bring forward arguments of practical people on the subject.

The learned Advocate-General had alluded to the misconception which existed as to the real effect of the Section which had been objected to. But he (Mr. Sutherland) did not think that was to be wondered at, because the Bill that had reached Cachar, the nearest Tea District, was the Bill in its earlier stage, which included Sections that had since been withdrawn from Section 117. He had already referred to the history of this Section. In the letter addressed by the Government of Bengal to the Government of India on the 28th of December last, and in the 46th paragraph it is stated that the Commissioners recommended that in the event of any laborer, after rescission of his contract by mutual consent, remaining in the service either of his old employer or any one else, he should come under the sanitary provisions of the Act. It was also stated that the Lieutenant-Governor was in favor of the proposition, and a provision to that effect was introduced in the draft Bill. To that there seemed to be no objection. We had tacitly agreed to the principle of protection—special and exceptional protection for three years; and, as he (Mr. Sutherland) understood it, the proposition then made applied to the case of a contract dissolved before the expiration of three years. He would not go in detail over the various phases of the question in the several Sections that had since from time to time been proposed, and which culminated in the present Section 117. The Advocate-General said that the 40 Sections of the Bill which were extended by Section 117 could only apply to laborers working under contract. He (Mr. Sutherland) would ask if they applied simply to the contracts of laborers working on tea gardens; or would they apply equally to contracts for building houses, &c., &c.

[THE ADVOCATE-GENERAL.—Certainly not.]

Then he would repeat his argument that the application of the law would be inconsistent and unequal.

There was only one other remark he wished to make. He was not prepared to oppose the motion for the passing of the Bill, though he felt as strongly as ever on the matter. The Advocate-General alluded to the coolies who cultivated vegetables and rice under contract for the other coolies, and had explained that the Act would not apply to them, and never did. But he (Mr. Sutherland) would state to the Council that at times when these people did not cultivate they marched in a body to another garden during the plucking season when their services would be gladly accepted, and took contracts for one, two, or three months. He wished to know if the Act would apply to such contracts.

[THE ADVOCATE-GENERAL.—Certainly.]

Then he (Mr. Sutherland) contended that if the Bill applied to such contracts, it placed restrictions on labor by obliging the planter to provide a superabundance of house accommodation and hospital requirements for any sudden influx of laborers.

Section 102 of the Bill, as ultimately passed, gave a nominal advantage to the planter in the way of summary proceeding in cases of desertion. He believed the Hon'ble Member opposite

·o Issur Chunder Ghosal), or at ents the British Indian Association, ointed out the unfairness of apply- is Section regarding desertion to borer. He (Mr. Sutherland) con- that he was surprised that the le Members who represented the community, and who were expect- feel an interest in the welfare of poorer fellow countrymen, did not exception to such a provision. ting for himself he did not think his Section as regards time-expired ers was wanted. Time-expired s did not desert: they were better ned, they knew when they were off, and it was only raw ignorant s who were induced by evil dis- persons to desert. He had no the Advocate-General would lesire to exclude this Section from tion as to time-expired laborers: hole course of the proceeding on Bill had been a system of with- ls and amendments from first to

would only repeat what had been ere and elsewhere that the pro- to which he had been referring inconsistent, unequal, and of an tional nature in providing special, he thought unnecessary protec- or some and denying it to others; hacting that simply from the acci- of men having once been under ct, they should continue under its tive provisions in the Tea Districts rest of their natural lives.

MONEY said he had only one to make before the motion the Council was put. Since the Section had been framed the defi- of the word "laborer" had been , and the term now included s who entered into fresh contracts he expiration of their original cts. This might lead to some mis- hension, for he found that Sections he application of which re-en- laborers were excluded, would, ing to the altered definition of ord "laborer," apply to time-ex- men. He would instance as an le Section 82, the words of which

"It shall be lawful for the Lieutenant-Governor of Bengal from time to time, by order published as aforesaid, to fix a yearly sum not exceeding one Rupee *per laborer* for the purpose of defraying the expenses of carrying out the purposes of this Act."

When that Section was framed the word "laborer" applied only to persons who were serving under the contracts under which they were taken up to the Tea Districts: now it would apply to time-expired men. He (Mr. Money) would therefore move, with the view of avoiding such an application of the term "laborer," that the following words be added to Section 117:—

"And save as in this Section is provided none of the provisions of this Act regarding laborers shall apply to laborers whose contracts shall once have been completed or dissolved."

THE ADVOCATE-GENERAL said that the amendment proposed appeared entirely unnecessary and to rest on a misconception. It was quite true that under the present definition the word "laborer" included any person who had under contract been conveyed to the place of labor at the expense of the employer. Therefore laborers were of two classes: those who were taken up to the districts under contract, and those who were working under renewed contracts entered into at the place of labor. Then Section 117 said that *any* laborer who had been conveyed to the place of labor for the purpose of laboring for hire, should, whatever his contract might be, be subject to the provisions of certain Sections of the Act, from the enumeration of which Section 82 was omitted. Consequently, the provisions of Section 82, regarding the payment of a rate, did not apply to the second class of laborers.

He (the Advocate-General) did not think he could to any purpose follow the objections of the Hon'ble Member on his right (Mr. Sutherland), because anything further that could be said would merely be a repetition of the remarks that had already been made.

MR. MONEY'S amendment being put, the Council divided:—

AYE. 1.
Mr. Money.

NOES. 11.
Baboo Chunder Mohun Chatterjee.
Baboo Issur Chunder Ghosal.
Koomar Satyanund Ghosal.
Mr. Sutherland.
Mr. Alcock.
Baboo Peary Chand Mittra.
Mr. Knowles.
Mr. Rivers Thompson.
The Hon'ble Ashley Eden.
The Advocate-General
The President.

The motion was therefore negr

The question was then put tl Bill be passed.

The motion was agreed to, a Bill passed.

The Council was adjourned *sin*

(This leaf to be cancelled on the issue of Part III.

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